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Report of

NGO Expert Meeting

on the

Mandate of the Special Rapporteur

on

Violence against Women, Its Causes and Consequences

by

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I. INTRODUCTION

Over the past fifty years the international community has taken a number of steps to ensure the promotion and protection of fundamental human rights. The denial and actual violation of rights, however, were primarily seen to be the result of state actions and inaction and the measures implemented were almost uniformly conceived, defined and interpreted through a predominantly male orientation which even today continues to characterize much of the international discourse on human rights. Thus it was and remains true that "violations of women's human rights often go unrecognized, and when recognized are unpunished and unremedied".[1] It also was and remains true that a number of the forms violence against women takes were not conceptualized or appreciated as violations of women's human rights but rather regarded as the natural, and therefore somehow acceptable, result of traditional attitudes, practices and customs in all kinds of societies and, in many cases, simply a question of minor disagreements between private actors.

If it can be assumed that it is not seen to be in the interest of those who are privileged, in the majority men, to change the status quo then it is possible to imagine that no measures would have been contemplated let alone introduced to ensure that violations of women's human rights do not continue to go unrecognized and unpunished. The fact that some preliminary and possibly significant steps have been taken, however, may be seen largely to be the result of efforts by women themselves. Acting both as individuals and through women's organizations in every region of the world, they succeeded in demonstrating, in the starkest possible terms, the failure of the international community to treat seriously and substantively women's human rights and violence against women to the point that, faced with this ineluctable reality, the international community finally felt compelled to act.

It is within this context that the decision of the UN Commission on Human Rights (UNCHR), in 1994, to appoint a Special Rapporteur on Violence against Women, Its Causes and Consequences must be considered. It is also within this context that the scope of the mandate and dimension of the problems women experience must be appreciated. **In effect, the Special Rapporteur was given a mandate that encompasses the needs, situations and aspirations of approximately one-half of the people in every country in the world.**

Clearly, the scope of the mandate as envisioned by the UNCHR is daunting but this is not to suggest that the work cannot be done well and effectively or that it must be done alone. The practical reality is that this mechanism is unique among all of the special procedures created by the Commission on Human Rights in that there is a worldwide active political constituency to support and assist the Special Rapporteur. This constituency is women, as individuals and through the organizations they represent as well as the organizations and institutions representing them and protecting, promoting and defending their interests.

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[1] Rebecca J. Cook, "State Responsibility for Violations of Women's Human Rights", *Harvard Human Rights Journal*, Vol. 7, 1994, pp. 126-175.

As a part of this political constituency, the International Centre for Human Rights and Democratic Development organized a meeting of NGO experts in early July of 1994 for the express purpose of discussing the mandate of the Special Rapporteur and to present to her suggestions and recommendations on how the mandate might be implemented and the mechanism put into effective operation. It is important to emphasize here, that the meeting was organized as one of the first in what is assumed will be a series of consultations the Special Rapporteur will attend over time, involving organizations and women's networks in various regions of the world.

The purpose of the meeting was to focus on three areas. First, to discuss the legal framework of the mandate, including consideration of the Declaration on the Elimination of Violence against Women (hereinafter referred to as the VAW Declaration) and the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as the Women's Convention). Second, to review the status of data on violence against women available from international and local NGOs. And third, to consider the means for facilitating information exchange and coordination between the Special Rapporteur, the UN Centre for Human Rights, the Committee on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as CEDAW) monitoring State compliance with the provisions of the Women's Convention and the Division for the Advancement of Women (DAW).

Within these three broad areas it was anticipated that discussions would deal with a number of specific questions, including:

1. general human rights norms applicable to violations of physical and mental integrity and security of person;
2. the prohibition of gender discrimination and violence against women;
3. violence by private actors;
4. the scope of state responsibility for both state and non-state violations;
5. violence against women within the context of economic, social and cultural rights;
6. priority concerns of activists;
7. measures to prevent and remedy violence against women;
8. NGO documentation capacity; and,
9. the relationship between the Special Rapporteur's mandate and other UN human rights mechanisms.

These areas were to be discussed within the general understanding that neither the United Nations specifically nor the international community generally are lacking in high ideals and principles and, further, that were states to comply fully with the provisions of the International Bill of Human Rights few if any of the subsequent conventions, declarations, guidelines, protocols and other instruments in the field of human rights would be needed. **In other words and in terms of violence against women, it was posited that there already existed a comprehensive international framework in the International Bill of Human Rights through which violence against women could have been addressed had individual states and the international community chosen to apply the provisions within that framework to the situation of women with a rigour equal to that evidenced in their interpretation and application in relationship to the situation of men.** The absence of equal rigour was seen to have prompted the need to seek clearer definitions and stronger protections for women's human rights through instruments such as the Women's Convention. The VAW Declaration, which is not legally binding, adds content and meaning to existing provisions.

The approach of the meeting, therefore, was not one of articulating ideals but rather as one focussed on implementation: to consider how the mechanism of the Special Rapporteur could contribute most directly and substantively to both the methods of work within relevant treaty bodies and in concert with other thematic and special mechanisms to ensure that the issue of violence against women was coherently and systematically addressed by states, governments and private actors.

In a similar vein, the meeting was based on the understanding that there is no single defining characteristic of a society in which violence against women occurs and is tolerated and neither is there a single defining nature to the violations that occur nor a single cause. The lack of development for women and the failure to assure women their economic, social and cultural rights was understood to contribute to incidents of violence. It was explicitly understood that women are tortured, they disappear, they are summarily executed, they are victims of violence in armed conflicts, they are victims of domestic physical and psychological violence, and they make up a disproportionate number of refugees and internally displaced persons. And they are silenced.

Particular emphasis was given to this last point out of recognition of the fact that the overwhelming majority of women in every region of the world are not able to exercise their right to freedom of opinion and expression and to speak of their experiences freely and without fear. This point was emphasized because history has shown that when a person does not enjoy the right to freedom of expression the effective enjoyment of most other rights, including the rights to life and security of person, remains beyond reach. It was accepted that unless broken, the silence surrounding women would inevitably mean that societies would continue to witness daily incidents and practices against women, on both large and small scales and in the public and private spheres, that are degrading, violent, predictable, preventable and, worse, tolerated.[2]

Given the priorities and preoccupations women have articulated over the years and finally succeeded in placing on the international agenda, the approach adopted by the meeting was practical rather than theoretical and, in some ways, to consider the mandate of the Special Rapporteur as one means to give effective meaning to the right of women to freedom of expression.

It bears repeating that the intent was not to have the outcome of the meeting assumed to be or taken as uniquely prescriptive but rather as reflecting a general outline of broad areas of concern to women through which the Special Rapporteur could then consider incidents and practices of a more specific or local nature, the means that exist and the approach that might be taken to address them.

The organization and content of the following report reflects a summary of the oral and written commentaries provided by participants as well as points raised in general discussion. Supplementary information and comment have been taken from published papers and articles and relevant UN documents that were provided to participants as background materials.

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[2]General summary of selected opening comments by Gisèle Côté-Harper, Chairperson, NGO Expert Meeting (Montreal, 1994).

II. Overview of developments leading to the appointment of the Special Rapporteur on Violence against Women

While the World Conference on Women in Nairobi in 1985 undoubtedly helped to raise the profile of women's human rights generally, it has only been over the last four years that a sense of urgency has crept into the tenor of discussions, making it increasingly difficult for the international community to ignore, within a human rights context, the needs and situation of women worldwide. Credit for this necessary and welcome development must in large measure be given to women who, acting both as individuals and through women's organizations in every region of the world and in spite of indifference, resistance, harassment and threat, continued to insist that the issue of women's human rights and violence against women be addressed in a meaningful and substantive way.

Bearing in mind that the Women's Convention entered into force in 1981, a breakthrough in securing a higher profile for questions relating to the status of women was achieved in March, 1993, when the UN Commission on Human Rights adopted the first-ever resolution aimed at integrating the rights of women into the human rights mechanisms of the United Nations. This was followed by a decision by the Commission on the Status Women, also in March, 1993, to adopt in draft form the VAW Declaration.

Concurrent with these developments in the governmental sphere, women in the non-governmental community joined forces through the Global Campaign on Women's Rights as Human Rights and through the project called 16 Days of Action, staged an international tribunal on violence against women at the June, 1993, UN World Conference on Human Rights in Vienna. This tribunal not only succeeded in raising the profile of women's human rights generally but met the three goals outlined by the Global Campaign, namely: 1) to provide a space in Vienna where women could speak on violence against women; 2) to increase the legitimacy of the issue, and; 3) to begin a process of documentation and the compilation of case studies on the question.[3]

The active and very apparent presence of women at the World Conference through this tribunal, seminars and workshops created an atmosphere of inevitability in which the governments participating in the Conference understood that they could not fail to affirm unequivocally the equal status of the human rights of women and reaffirm the universality of all human rights of women and men. Further, governments understood that it was essential for the World Conference to call on the UN General Assembly to adopt the VAW Declaration in part in recognition of the international community's long-standing failure to protect and promote women's human rights and specifically to take measures that would by their very nature acknowledge that violence against women is an abuse of women's human rights.

The decision by the World Conference to call for the adoption of the VAW Declaration must also be seen to be an acknowledgement of the fact that no instrument, including the Women's Convention, explicitly addresses violence against women and that a separate instrument on this question was necessary to complement both the Women's Convention and the work of CEDAW, the committee responsible for monitoring compliance by states parties to the Women's Convention.[4]

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[3]Niamh Reilly, general summary, unpublished notes prepared for NGO Expert Meeting (Montreal, 1994).

[4]Valerie Raymond, general summary, unpublished notes prepared for the NGO Expert Meeting, (Montreal, 1994).

Inasmuch as the assembly of states at the World Conference was also the assembly of states that make up the UN General Assembly, it should perhaps not be surprising that governments basically heeded their own call and as the General Assembly in December, 1993, adopted by consensus the VAW Declaration.

The VAW Declaration places the issue of violence against women squarely within the framework of existing international human rights standards and represents a moral commitment by UN member states to work toward eradicating violence against women.[5] The situations relating to violence against women that states must address and remedy are unambiguous given the broad definition of violence -- including physical, sexual and psychological violence -- and the extensive listing of specific and various forms such violence takes in the family and general community or through acts perpetrated or condoned by states. These forms include:

> Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices ... non-spousal violence and violence related to exploitation; physical, sexual and psychological violence occurring within the general community including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.[6]

The reference to domestic violence is seen as particularly significant in that previous international human rights instruments have avoided delving into the private and/or domestic sphere of the violation of rights.[7] That the VAW Declaration refers to battering, dowry related incidents, female genital mutilation, and sexual harassment in the workplace should ensure that there is no misunderstanding in terms of the kinds of violence states cannot condone or accept.

In addition to the definition of violence and the various forms it can and does take, the VAW Declaration is also explicit in terms of the legal, administrative, social and educational measures which states should take to prevent and punish acts of violence against women, including but not limited to:

1) exercise of due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or private persons;
2) development of penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence;
3) provision of access to the mechanisms of justice for women who have been subjected to violence and, as provided for by national legislation, to just and effective remedies for the harm they have suffered, and; provision of information to women of their rights in seeking redress through such mechanisms;
4) consideration of the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing;

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[5]Ibid.

[6]UN Declaration on the Elimination of Violence against Women, Article 2 (a) (b) (c).

[7]Raymond, loc. cit.

5) development of preventive approaches addressing legal, political, administrative and cultural measures and practices to ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;
6) provision by governments in their budgets of adequate resources for activities related to the elimination of violence against women; and
7) provision of training, on the needs of women, for law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women.[8]

The detail contained in the VAW Declaration and the relatively easy adoption of the text, by UN standards, may be seen to reflect a general acceptance of the work done by non-governmental experts in the drafting process. The willingness of governments to negotiate seriously and move quickly, therefore, should be understood to reflect the success of the women's movement in both the North and South and on both the national and international levels in raising the profile of the gravity, pervasiveness and seriousness of the problem of violence against women in all countries, all cultures.[9]

Adoption of the VAW Declaration by consensus was an important step in legitimizing the international community's efforts to counter violence against women,[10] a legitimation that was further reinforced by the consensus decision of the 1994 Commission on Human Rights to appoint a Special Rapporteur on Violence against Women, Its Causes and Consequences.

This appointment created a practical mechanism through which individual incidents and general patterns of violence against women can be assessed and acted upon. The mechanism also provides the means through which recommendations can be made to the international community generally as well as individual states in terms of the measures that should be taken to prevent violence against women, punish those who perpetrate such acts and provide remedy for victims.

It is important to underline here that the UNCHR adopted the resolution authorizing the appointment on the assumption that the mechanism will acknowledge and address violence against women irrespective of geographical considerations. That is, that the issue will be seen to be one of global importance and relevance. This point was emphasized in a number of interventions by governmental delegations at the UNCHR during the discussion of women's rights held prior to adoption of the resolution. Canada, for example, explicitly stated that "The international community now recognizes that violence against women crosses all geographic, cultural and socio-economic barriers. ... This is not a problem unique to any region of the world, or to any set of religious, political or socio-economic circumstances."[11]

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[8]UN Declaration on the Elimination of Violence against Women, article 4 (a) to (q).

[9]Raymond, loc. cit.

[10]Raymond, loc. cit.

[11]Statement by Canada under UNCHR agenda item 11, "Further Promotion and Encouragement of Human Rights and Fundamental Freedoms", 24 February 1994.

III. Summary of the Scope of the Mandate[12]

In analyzing the scope of the mandate of the Special Rapporteur as set out in the enabling resolution adopted by consensus at the 1994 session of the UN Commission on Human Rights the following five points are key to its interpretation.[13]

First, the legal framework of the mandate is generally defined by reference to the UN Charter, the International Bill of Human Rights, the Women's Convention, and all other international human rights instruments. Complementary to these, reference is made to the non-binding instruments of the VAW Declaration and the Vienna Declaration and Programme of Action.

Second, three main areas of concern are addressed, as well as the nature of the states' responsibility to respond. The three areas identified are: gender-based violence in the family, gender-based violence in the community, and gender-based violence "perpetrated or condoned by the State". In terms of the behaviour of states, the resolution underlines "the duty of Governments to refrain from engaging in violence against women and to exercise due diligence to prevent, investigate and, in accordance with national legislation, to punish acts of violence against women, whether those acts are perpetrated by the State or by private persons, and to provide access to just and effective remedies and specialized assistance to victims."[14]

Third, the resolution calls for "the elimination of violence against women in public and private life, of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism."[15]

While fairly comprehensive in its characterization of the forms and sources of violence against women, the above language appears to anticipate measures to eradicate the "harmful effects" of violence resulting from some practices rather than the causes themselves. A similar mitigating effect may be seen in the use of the phrase "religious extremism" inasmuch as governments have proven themselves adept at the subjective interpretation of such language and at making arguments to the effect that certain laws, practices and traditions are not "extreme" but merely consistent with the nature and customs of the societies in which they exist.

Fourth, and in terms of carrying out the mandate, the resolution enables the Special Rapporteur to carry out and follow up on "missions undertaken either separately or jointly with other special rapporteurs and working groups".[16] Similarly, the resolution anticipates that the mandate will be carried out in such a way as to include an investigative approach and further enables the Special Rapporteur to "recommend measures, ways and means, at the national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences".[17]

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[12]Ariane Brunet, general summary, unpublished paper prepared for NGO Expert Meeting, (Montreal, 1994).

[13]See UNCHR resolution L.8/Rev.1, 1994, for full text as adopted by the Commission on Human Rights.

[14]Ibid., op. para. 2.

[15]Ibid., op. para. 4.

[16]Ibid., op. para. 10.

[17]Ibid., op. para. 7(b).

Fifth, the resolution clearly intends for the Special Rapporteur to extend the cooperative character of the mandate. It is assumed that this aspect will involve a comprehensive reporting function that will include ensuring that the Special Rapporteur's annual reports to the UNCHR are brought to the attention on the Commission on the Status of Women.[18] As well, reference is made to the Special Rapporteur holding periodic consultations with CEDAW and all other treaty bodies,[19] as well as pursuing a cooperative approach with rapporteurs, working groups and special representatives of both the UNCHR and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.[20]

It can be inferred from these and other elements in the mandate that the role of the Special Rapporteur is pro-active. In that sense the enabling resolution explicitly acknowledges what women have known for a long time, namely that "States that refuse or consistently fail to meet their international legal commitments cast doubt on the legitimacy of their membership in the community of nations."[21] And further, that while states may now be demonstrating a certain willingness to recognize the violations of human rights experienced by women through consensus adoption of various instruments and resolutions that recognition will not in an of itself correct the situation because states continue "to disagree about the specific contents of rights, the particular practices that constitute violations of rights, and the violations that render states accountable."[22]

Given the above, it could be said that in some ways the mandate of the Special Rapporteur assumes a mediating character between the support of states for the principle of the equality of women's rights and their actual policies and practices as they pertain to violence against women. Whatever mediation that may occur, however, is by definition weighted in favour of all states ensuring conduct consistent with both the spirit and letter of international human rights law.

In a similar vein it could be said that the mandate calls on the Special Rapporteur to mediate between three views of the issue of violence against women which have been prevalent in recent years. The first, taken by radical feminists, sees violence as intrinsic in the relationship between men and women and manifested in the social and political institutions of society. The second, that of socialist feminists, sees violence as part of social and economic forces which operate in society. And the third, that of ecofeminists, creates an equation between women and nature and sees violence as an integral part of the development process.[23]

Inasmuch as the mandate explicitly refers to traditional attitudes and practices that have ensured the subordination of women for centuries (the first view), the inalienable right of women to equal participation in economic and social life (the second view) and the right of women to participate fully in and benefit from the development process (the third view) it could be said that the mediation process will be one through which varying perspectives can be brought together to form a coherent and overarching human rights approach to the specific problem of violence against women, its causes and consequences.

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[18]Ibid., op. para. 11.

[19]Ibid., op. para. 10.

[20]Ibid., op. para. 7(c).

[21]Cook, op. cit., p. 174.

[22]Ibid.

[23]Radhika Coomaraswamy, unpublished notes prepared for the NGO Expert Meeting, (Montreal, 1994).

This human rights approach must be understood to include the right of women to freedom from fear and an effective right to be secure. As such, it is essential for the approach to be conceptualized in such a way as to address those elements which through the use of force or the threat of the use of force prevent the necessary empowerment of women. And further, that this approach by definition will consider the obligation of states to ensure that women are given full opportunity to be independent and empowered without being abused.[24]

IV. Normative framework of the mandate of the Special Rapporteur

A. The International Bill of Human Rights

It has been understood for some time that within general human rights norms and the International Bill of Human Rights all rights apply to all people, that is that all people are created equal.[25] Based on this understanding, therefore, the task of the Special Rapporteur is not to define women's rights and recommend the means for their codification but rather to build on the normative framework in which those rights already exist and to focus on "content, process, and enforcement, rather than on principles of women's legal equality".[26]

Historically, the process of defining the rights that are now recognized, and their equal application, has emphasized the protection of physical and moral integrity rights, that is, the rights to life, liberty and security of person. The drafting and adoption of instruments and the creation of thematic mechanisms for monitoring and investigative purposes have therefore focussed on a number of areas including protection against violence, torture, detention, exile, slavery and servitude, interference with one's privacy, as well as protection against restrictions on movement, thought, conscience, religion, opinion and expression.

As well, the system was devised so as to provide equal protection and equal treatment under the law for all persons, a provision which is generally seen to address the question of the protection, promotion and realization of economic, social and cultural rights, rights which are arguably of particular importance to women.

The shortcoming, if it is to be called that, in the system is that it has traditionally and principally operated from the perspective of dealing with violations by the state and individuals acting on behalf of the state.[27] Given that a number of forms of violence against women occur within the private sphere, this emphasis on the conduct of the state and its agents has inevitably led to a denial to women of full and effective access to the international legal system of protection.

This imbalance in perception and application has been addressed in recent years, however, and most significantly by the Human Rights Committee (HRC) which monitors the compliance of states parties to the Covenant on Civil and Political Rights (ICCPR). The HRC has adopted a number of General Comments which have made an important contribution towards widening the scope of integrity rights so as also to provide protection against non-state actors, i.e. individuals and associations.[28]

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[24]Ibid.

[25]Cees Flinterman, unpublished notes prepared for the NGO Expert Meeting, (Montreal, 1994).

[26]Cook, loc. cit.

[27]Flinterman, op. cit.

[28]Ibid.

For example, with regard to the right to life (article 6, ICCPR), the Committee determined that states have a responsibility to deter activities that are a threat to human life, e.g. a duty to prevent and investigate disappearances, a duty to take all possible measures to reduce infant mortality and increase life expectancy through adoption of measures which eliminate malnutrition and epidemics.[29]

In terms of the prohibition of torture (article 7, ICCPR) the Committee determined that it is the duty of public authorities to ensure protection against torture **even when committed by persons acting outside or without official authority**.[30]

Referring to the right to liberty and security of person (article 9, ICCPR), the Committee stated that this article "is applicable to all deprivations of liberty, including such deprivation by individuals" and further that article 10 of the ICCPR covers "all situations where persons are lawfully held against their will, not only in prisons but also for example, hospitals and detention or correction institutions".[31]

In addition to these three specific General Comments, the Human Rights Committee has also issued a General Comment urging all states parties to report on de facto discriminatory practices by public authorities, by the community, or by private persons or bodies.[32]

As the above demonstrates, current thinking reflects a shift away from the view that integrity rights are only negative rights to one in which it is recognized that rights entail positive obligations for the state which are seen to require the state not only to prevent violations of integrity rights by itself, as it were, and its agents, but also by non-state actors, individuals and private bodies. As such, it has become accepted that integrity rights and their protection from violation extend to the private sphere.[33]

This evolution or widening of the scope of state responsibility suggests that the primary normative framework for the protection of human rights, the International Bill of Human Rights, can indeed be seen to correspond to the needs of women in terms of the right of protection from and the state's responsibility for acts of violence committed by non-state actors. What seems to be missing in the international system, therefore, isn't in fact the means but rather sufficient insight into and understanding of the situation of women so as to allow many of the violations of their rights to be appreciated as violations of fundamental rights the International Bill is intended to protect.

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[29]Ibid.

[30]Ibid.

[31]Article 10 of the Covenant on Civil and Political Rights:

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
   (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

[32]Flinterman, op. cit.

[33]Ibid.

A good example of the failure to extend the conceptualization of rights contained in the International Bill to the situation of women can be found in the perspective from which the question of torture, in relationship to rape and sexual assault directed against women, is treated. "The still prevalent tendency to view physical and mental abuse against women as merely aberrant criminal behaviour, on the one hand, or a ubiquitous feature of social relations, on the other, may foster assumptions that such abuse only rarely rises to the level of severe suffering necessary to constitute torture."[34] This tendency to take a generally "benign" view of sexual assault and abuse of women, or at least not to see it as torture has perhaps been inadvertently reinforced over the years in the reports prepared for the UNCHR by the Special Rapporteur on Torture.

While these reports have at times drawn a correlation between ethnic or religious identity and the use of rape a similar correlation has not been drawn between the status of women in societies and the targeted use of rape against women. Similarly, forced pregnancy as an aspect of the harm women suffer from rape, a harm unique to women, has not been addressed.[35] And finally, it may be instructive to note that in his 1991 report to the UNCHR the Rapporteur referred to the case of a woman "who was detained and tortured by various means and 'also raped'. This syntax suggests an unintended distinction between 'torture' and 'rape'."[36] Were the characterization of rape as not being a form of torture common, there would be legal consequences inasmuch as "the ICCPR, which is central to the Rapporteur's interpretation of the legal framework applicable to his mandate, has been interpreted to require the state to prevent, investigate and punish torture and to compensate the victim."[37]

While it is always dangerous to draw general conclusions from one example or incident, experience suggests that the artificial distinction drawn between torture and rape may be mirrored in similarly artificial distinctions between harms suffered by women and "classic" interpretations of human rights and fundamental freedoms. Thus, it is not surprising that a certain lack of confidence or reluctance to refer to the International Bill of Human Rights as the normative framework for the mandate of the Special Rapporteur has been expressed by some individuals and organizations.

B. The Women's Convention

The Women's Convention is understood to be based on a non-discrimination model through which the efforts of states to promote and protect the human rights of women can be measured. As such, it has traditionally not been seen as an instrument seeking to remedy discriminatory practices that prevent women from enjoying equal status with and as effective an enjoyment of internationally recognized rights as men.

The Women's Convention doesn't, however, specifically refer to violence as a form of discrimination or as an obstacle to the equal enjoyment of rights by women. Many see this as a major weakness in the instrument and therefore question its value as forming the normative framework through which to address violence against women.

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[34]Women in the Law Project, *Token Gestures: Women's Human Rights and UN Reporting*, (The International Human Rights Law Group, Washington D.C., 1993), p. 3.

[35]Ibid., p. 7.

[36]Ibid. p. 8.

[37]Ibid.

It has fallen to CEDAW to take steps to try to fill this vacuum and validate the Women's Convention as a viable instrument in dealing with violence against women. To date CEDAW has issued four general recommendations on the subject, two of which were preliminary in nature and dealt with the issues of female circumcision and genital mutilation. The third, issued in 1989 urged states parties to include in their reports information on violence and on measures introduced to deal with it. The failing in the recommendation, however, was seen to be the fact that it did not provide a definition of violence against women and did not ask states to take specific measures to deal with it.[38]

It wasn't until the fourth recommendation was issued, General Recommendation No. 19 that CEDAW provided a significant framework and definition of violence through which the issue could be addressed under the provisions of the Women's Convention.

It may be helpful to note here several of the distinguishing features in General Recommendation No. 19.[39]

First, the text defines gender-based violence as a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. And further, that violence is gender-based violence when it is directed against a woman because she is a woman or affects women disproportionately.

Second, the scope of responsibility for acts of discrimination under the provisions of the Women's Convention, and therefore violence against women, was not seen to be restricted to action by or on behalf of governments but also understood to include any act of discrimination by any person, organization or enterprise. Thus, under the Women's Convention, states can be held responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence. States are also seen to be responsible for providing compensation to victims.

Third and quite significantly, General Recommendation No. 19 considers that violence against women violates rights guaranteed in standard international human rights law and specific treaties, including the prohibition of torture and the rights to life, equal protection through humanitarian norms in situations of armed conflict (internal or international), equal protection of the law, equality in the family, the highest attainable standard of physical and mental health and just and favourable conditions of work.

Fourth, through the recommendation traditional attitudes by which women are regarded as subordinate to men and which often lead to violence against women (e.g. dowry deaths, forced marriage) were specifically seen to be within the scope of the Women's Convention.

For CEDAW the effectiveness of General Recommendation No. 19 in establishing the link between violence and discrimination remains to be established. If such a link cannot be firmly established that its use as a tool in asking states parties to implement specific measures to eliminate violence against women in general and in relation to specific articles of the Women's Convention will be significantly mitigated.

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[38] Carlota Bustelo, "The Prohibition of Gender Discrimination and Violence against Women: CEDAW and General Recommendation No. 19", unpublished paper prepared for the NGO Expert Meeting, (Montreal,1994).

[39] Ibid.

Mitigation against effective action on violence against women under the provisions of the Women's Convention will also continue in the absence of the adoption of an optional protocol allowing for the individual right of petition.

C. Declaration on the Elimination of Violence against Women

As noted above, the VAW Declaration places the issue of violence against women within the framework of existing international human rights standards and can be understood to represent a moral commitment by UN member states to work toward eradicating violence against women.[40]

The essential strength of the VAW Declaration may prove to be found in its unambiguous terms, the direct reference to domestic violence and acts occurring in the private sphere, and the exhaustive list of the forms of violence against women which should not and cannot be any longer tolerated.

At the same time, however, the definition of violence could be seen to place the emphasis on individual victims at the receiving end of individual acts of violence, that is, a criminal use of force.[41] If it were to become the case that this definition is allowed to stand as the primary or only one through which violence against women is considered it will make it more difficult to address other forms of violence, particularly those that do not, by their nature, always result in physical harm. These forms would include exploitation and discrimination arising from social and economic structures that must be seen as both causes and consequences of violence against women in systems that favour men and create a prevailing atmosphere of terror.

The primary weakness in the VAW Declaration is the fact that it is not a legally-binding instrument. Thus, while it may act as a quasi-legal aide-mémoire for governments when they are formulating and implementing policies relative to the rights of women, the VAW Declaration imposes no direct and legal obligation on them to take all appropriate measures to implement and ensure compliance with its provisions.

Given the above two points, viz. the emphasis on individual victims of individual acts and the VAW Declaration's non-binding character, it would seem that it is not particularly well suited to be considered as the main normative framework through which the issue of violence against women will be considered, investigated and reported. This not to suggest that the VAW Declaration isn't of significant value. It may well be that the outline of the legal, administrative, social and educational measures which states should take to prevent and punish acts of violence against women will prove useful not only as a reminder to states of areas they need to address but as one of the bases upon which the Special Rapporteur can assess the performance of states and make recommendations.

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[40]Raymond, op. cit.

[41]Coomaraswamy, op. cit.

D. The Scope of State Responsibility for State and Non-State Action

As noted above, the traditional practice in human rights law has been to adopt an approach of non-interference in the internal affairs of states. Nonetheless, "State conduct can be measured against responsibilities arising under customary international law and international human rights conventions."[42] Further, and relating to both state and non-state actions, "[U]nder the state responsibility doctrine, the state bears identifiable duties of prevention and redress".[43]

Again, as noted above, the scope for action in the area of non-state actors has been widened through the general comments issued by the Human Rights Committee relative to various articles in the Covenant on Civil and Political Rights. As a result, the doctrine of "due diligence" must now be understood to include the positive responsibility of states to promote and protect human rights rather than merely to refer only to the prevention and prohibition of violations. In the area of violence against women involving acts by non-state actors, therefore, it must be assumed as accepted that states can be held accountable for inaction and lack of vigilance in preventing violations and incidents of violence.

While it is also accepted that states have no right to an absolute defense of sovereignty and are required to exercise due diligence, "Multilateral treaties permit explicit limitations in treaty provisions; implicit limitations arise from the jurisprudential context of treaty operation".[44] Further, it is common that states are allowed to derogate from obligations on various grounds usually having to do with public security and states of emergency as it is common that in international instruments to "circumscribe rights *ab initio* with limitations they deem necessary or expedient".[45] The grounds for circumscribing rights often fall into the category of public order and *ordre public*.

Along the same lines, states may enter formal reservations to any treaty at the time of accession or ratification. It is often the case that these reservations are couched in "general language to preclude treaty applications [states] perceive to conflict with the provisions or values of their national cultures and religions".[46] In this regard, it may be helpful to recall here that the Women's Convention currently has the largest number of reservations formally entered by states parties to it than any other legally binding international human rights instrument. These broad and vaguely worded reservations not only run counter to the spirit of the Women's Convention but also eviscerate it, offsetting its provisions for the effective promotion and protection of women's human rights.

Further, "A state may also claim a margin of appreciation for the application of its international human rights commitment to its circumstances, subject to the rule that a treaty member may not invoke its internal law as justification for its failure to perform a treaty."[47] It would be fair to say that "The breadth of a state's margin of appreciation is inversely proportional to the universality of the human rights. The wider the margin allowed, the less the commitment binds universally."[48]

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[42]Cook, op. cit., p. 137

[43]Cook, loc. cit.

[44]Cook, op. cit., p. 172.

[45]Cook, loc. cit.

[46]Cook, op. cit., p. 175.

[47]Ibid.

[48]Ibid.

The above points demonstrate that state responsibility for its own actions and increasingly the actions of non-state actors is an accepted principle under international human rights law, supported by binding provisions in various instruments. The problem of compliance by states with both the principle and provisions, however, makes the protection and promotion of women's human rights far from sure. This difficulty is compounded by the combined effect of reservations, circumscriptions and margins of appreciation afforded to states and it must be anticipated that such practices will continue to have an appreciable and negative impact on the effort to have the issue of violence against women dealt with in a comprehensive and substantive way.

E. The Scope of the Duty of States to Provide Remedy

The majority of international human rights treaties stipulate that judicial remedies for violations must be provided in national law.[49]

The most explicit reference to remedy is found in article 3 of the Covenant on Civil and Political Rights which not only requires remedy but also states that "the competent authorities shall enforce such remedies when granted". The remedy envisaged by this provision, if not judicial in nature must then be provided either by administrative or legislative bodies or another competent authority.[50]

A similar requirement is found in article 2(c) of the Women's Convention, stipulating that all states shall "establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination".[51]

In terms of the VAW Declaration there is language to the effect that women who are the victims of violence "should be provided with access to the mechanisms of justice and ... to just and effective remedies for the harm that they have suffered".[52] The VAW Declaration also stresses that states "should inform women of their rights in seeking redress through such mechanisms".[53]

In addition to the specific references to remedy in the above three instruments, an increasing attention has been paid to the issue of the enforceability of economic, social and cultural rights and women's human rights.

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[49]Cees Flinterman, unpublished paper, prepared for the NGO Expert Meeting (Montreal, 1994).

[50]Article 3 of the Covenant on Civil and Political Rights reads:

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

[51]Article 2(c), Convention on the Elimination of All Forms of Discrimination Against Women.

[52]UN Declaration on the Elimination of Violence against Women, article 4 (d).

[53]Ibid.

In terms of the first, the Covenant on Economic, Social and Cultural Rights (ICESCR), the instrument itself does not contain an explicit reference to judicial remedies but the Limburg Principles relative to the implementation of the Covenant refer to the fact that "states parties shall provide for effective remedies including, where appropriate, judicial remedies".[54] The reference to judicial remedies is especially interesting in that the provisions of the ICESCR are generally not considered to be directly justiciable. What the Limburg Principles say is that notwithstanding this fact the articles of the Covenant must be seen as having a significant role in terms of influencing how domestic legislation on relevant issues is interpreted and, further, that if found to be incomplete or inappropriately administered judicial remedies for victims must be considered. The Committee on Economic, Social and Cultural Rights has taken the question of the enforceability of these rights, and remedies, one step further by pressing for the adoption of an optional protocol to the Covenant which would allow for an individual right of petition and complaints procedure.

With regard to women's human rights, the Commission on the Status of Women and CEDAW have both emphasized the importance of drafting and adopting an optional protocol to the Women's Convention which would similarly provide for an individual right of petition.

Were such protocols to be ratified and enter into force they could well have an important impact on the establishment and further development of national remedies, including judicial remedies.[55]

The difficulty in each of these cases, where remedy is either already provided or the means by which to secure it are currently being contemplated, is that they involve instruments that are part of the treaty regime and as such any provision for remedy can only be applied to those states that are parties to them. With the twin goals of universal ratification and a withdrawal of reservations to the various instruments still far from being realized it is evident that the question of effective remedy in cases of violence against women will not be resolved to the satisfaction of victims any time soon.

F. Violence against Women and Economic, Social and Cultural Rights

Consideration of economic, social and cultural rights must necessarily include consideration of labour issues and as such be seen to refer to the empowerment and protection of workers and the balance between their obligation to work and their right to work. Further, the causes and consequences of violence against women within the context of labour issues must be seen to arise from the fact that many women live and are kept in a chronic state of poverty from which the only potential means of escape are often unacceptable and prejudicial working conditions characterized by a pervasive atmosphere of potential and/or real violence and harassment.[56]

From this perspective, General Recommendation No. 19 of CEDAW, defining violence against women as a form of discrimination, can be seen actually to describe what some feminists call the "commodification of women's bodies" which is seen as having three dimensions.[57]

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[54]Flinterman, op. cit.

[55]Ibid.

[56]Lucie Lamarche, unpublished notes prepared for the NGO Expert Meeting, (Montreal, 1994).

[57]Ibid.

First, it implies that women's bodies are used for economic exploitation as an answer to economic desperation. Trafficking in women and sexual slavery are the two most pronounced manifestations of this dimension, followed by other forms of forced labour. Second, the lack of independence and financial security for women as classified paid workers has meant that private sphere family needs and community structures are becoming more oppressive towards women. And third, the commodification of women's bodies in terms of being seen as essential to family well-being and the gross national product of nations assumes a new meaning when the consequences of structural adjustment policies are considered within the context of the globalization of the economy.

In terms of existing international instruments on economic rights and their relationship to the situation of women, the VAW Declaration is seen to be lacking in that it fails to take into account fully the accepted principle of the interdependence of all human rights. The Women's Convention, on the other hand, is seen to have done more in this area inasmuch as it encourages and recognizes economic citizenship.

It is in the work of the Committee on Economic, Social and Cultural Rights, however, where the most work in this area is considered to have been done. This assessment has arisen in part from the fact that, unlike the Commission on Human Rights which has addressed the question of poverty from a humanitarian perspective, the Committee has approached the issue from the perspective of the promotion and protection of the economic rights of women within the new and difficult conditions of the global market.

This forward-looking approach to women's economic rights, however, is far from being universally adopted as two current situations demonstrate.

The first relates to work being done by the International Labour Organization (ILO) and involves consideration of the possibility of drafting some form of "soft" law on labour issues, that is, a state self-regulated international code of labour which would be accepted as a minimal core social clause reference in the context of the World Trade Organization.[58] The concern that has been raised about this initiative arises from the apparent missing link between the ILO's existing interdepartmental women's project and the proposed international code. In other words, there appears to have been no effort made in the process thus far to take into account the interests and needs of women. Should the current approach continue then it has to be anticipated, based on experience in other areas, that the drafting of an international code of labour will, by definition, be managed in a man's world, redesigning not only labour issues but also labour safeguards and, somehow, offering the GATT their (men's) contribution for the construction of a self-regulated guide in the field of labour issues.[59]

The second situation or concern has arisen as a result of developments in the current preparatory process leading up to the UN Summit on Social Development. Specifically, the issue involves an increasingly common and systematic use of "master-words"[60] in statements by governments. These "master-words" may, if accepted and included in the final declaration and program of action agreed by states, constitute and legitimate a denial of women's rights for they generally refer to the so-called

[58]Ibid.

[59]Ibid.

[60]Ibid.

need of governments to reduce social expenditures in order to balance the national budget (or at least lower the level of the annual and accumulated national debt). It can be posited that if this reasoning is generally accepted at the summit and seen as being the "margin of appreciation" accorded governments, then responsibility for social well-being will be increasingly transferred from states. That is, responsibility for the realization of economic and social rights will be transferred from states, which are "firmly engaged through the Covenants and other conventions on the implementation of economic rights",[61] to the household. It can be further posited that should a wholesale transfer of responsibility occur it would, by definition, mean a denial of the economic value of domestic unpaid work which is, in the main, carried out by women.

It is worth emphasizing that this specific process of exclusion of women is a glaring contradiction to the supposed purpose of the Summit which is understood as one of working for social integration. It is also worth emphasizing that these apparent attempts to transfer responsibility for social well-being to households can lead to only one conclusion, namely that "the process of recognizing women as direct beneficiaries of social security schemes (whatever their participation to the concept and reality of work may be) and/or the creation of social security schemes adapted to the reality of women and work ... is far from being achieved".[62]

Following on the above, the objective of ensuring women's security and dignity clearly requires the development of protections in which social standards are seen as human rights and not trade tools. Further, it requires measures to ensure that the visibility of women's economic rights as they relate to international trade agreements be guaranteed.

In the absence of such measures, the drafting and adoption of an optional protocol to the Covenant on Economic, Social and Cultural Rights could well prove to be the avenue through which a higher visibility for this issue can be achieved. For the moment, and in the absence of such a protocol, the observations of experts defining the obligations of states under the Covenant "to take into account the effect on rights of any public policy"[63] may be the most useful and perhaps only means through which to defend against a further erosion of the already mitigated economic rights of women.

G. Summary and Recommendations

Summary

The review of instruments that could form the normative framework for the mandate of the Special Rapporteur points out not only the positive aspects in each of the instruments considered but also the negative. In response participants at the meeting observed the following:

a) Reference to the existing body of jurisprudence on women's rights may provide the Special Rapporteur with the guidance needed in determining the scope and limitations of the legal framework within which the mandate can and will operate.

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[61]Ibid.

[62]Ibid.

[63]Ibid.

b) Basing the mandate on the VAW Declaration, which is not legally binding, might weaken the impact of the mechanism and therefore consideration should be given to basing it on the provisions in other, legally binding instruments. Were this approach to be taken work could proceed on the understanding that human rights for women are not necessarily comparative to human rights for men and that the majority of existing human rights instruments were drafted and continue to be interpreted in an environment where the male view and experience of the world prevail. With legally-binding instruments as the normative framework, the VAW Declaration could be viewed as a document facilitating the interpretation or, more precisely the re-interpretation of those instruments. The effect of such a re-interpretation would, for example, challenge others to reconsider the traditional understanding of what constitutes torture and to accept that domestic violence and rape are, by their very nature, torture.

c) A decision on whether or not to accept the discrimination model defined by the Women's Convention and refined by General Recommendation No. 19 as the primary normative framework necessarily had to take into account the strong relationship between violence and discrimination and the strong prohibition of discrimination common in many instruments which could be seen to explicitly acknowledge that discrimination leads to violence.

d) The primary benefit to using the Women's Convention as the major instrument in interpreting the mandate could be seen in the opportunity it would afford to use the work of CEDAW to recommend to other treaty bodies approaches that might be taken within their respective frameworks to monitor more effectively violence against women.

e) Given that reference is made to humanitarian law in paragraph II(B)(38) of the Vienna Declaration and Programme of Action in the section dealing with the VAW Declaration[64] it can be assumed that the standards enunciated in international humanitarian law may be cited and used by the Special Rapporteur in carrying out her mandate.

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[64]Paragraph II(B)(38) of the Vienna Declaration and Programme of Action reads:
[T]he World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The World Conference on Human Rights calls upon the General Assembly to adopt the draft declaration on violence against women and urges States to combat violence against women in accordance with its provisions. Violations of human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response.

Recommendations

In light of the above, participants at the meeting made the following recommendations:

a) That the International Bill of Human Rights be used as the normative framework for the mandate, supported by all other international human rights instruments including the Women's Convention, the VAW Declaration and appropriate instruments in international humanitarian law and which can be used as interpretive aids;

b) That, in determining the approach to be taken, gender be used as the pre-dominant factor, viz. that violence arising from gender be the identifying factor in assessing the violation committed;

c) That structural violence with regard to labour rights, the economic situation of women, traditional practices and tribal customs be considered under the "causes and consequences" components of the mandate; and

d) That acceptance by the international community of the general principle that states must exercise due diligence in the prevention of human rights violations and promotion of the effective enjoyment of all rights be understood to be inclusive and requiring no further elucidation of a state's responsibility either for its own actions, those committed by its agents or by private individuals or organizations.

V. Building the Mandate -- Priorities of activists

The diversity of political, legal, cultural, social and economic traditions through which societies have evolved implies that one set of assumptions or one range of experiences of the world cannot be unilaterally imposed and declared to be the only frame of reference and the sole basis on which the mechanism will operate. It can be posited, however, that there are a number of forms of violence against women which, though perhaps slightly different in the way in which they are manifested, are experienced by women in a number of regions of the world and still others common in all societies and basically identical in both their own character and the effects they have on women (e.g. rape).

In a similar vein, it can also be posited that many of the underlying factors contributing to incidents of violence against women have a certain commonality and that women in very diverse societies have responded to violence in similar ways, such as creating community-based support networks.

The task then for women, their organizations and the Special Rapporteur is to outline in broad terms a set of priorities which can, over the first three years of the mandate gradually incorporate and address the specific concerns of women in various regions.

The following overview from regional perspectives is provided to highlight some of the areas women have identified as being of primary concern to them.

A. The Caribbean[65]

With the exception of The Bahamas all countries in the Caribbean have ratified the Women's Convention and all have ratified the Convention on the Rights of the Child. As well, most have signed and ratified the International Covenant on Civil and Political Rights. In spite of this generally good record of accession or ratification, however, no country includes in its legislation specific provisions prohibiting discrimination against women by non-state actors and in the current social, economic and political climate in the Caribbean "all individuals are facing an increased threat of personal violence".

This violence has three distinct characteristics. First, in general and irrespective of whether the victim is female or male, the perpetrator is male. Second, women and men suffer different harms in incidents of violence, harms which are determined by the sex of the victim. And third, the motivation for the perpetrator is often "the need to enforce or reproduce male power".

It is estimated that between one- and two-thirds of the women in the region experience violence in various forms, including sexual torture, forced prostitution and sexual harassment. The lack of detailed statistics in police and other official records, however, make it impossible to assess accurately the true nature and scope of the problem. The need for better information on violence against women must therefore be met if the issue is to gain the attention needed to ensure that effective and relevant policies are developed and action taken.

Balancing this generally negative reality, however, is the fact that in some countries violence against women "is now clearly acknowledged to be a crime against the victim and society". As well, women have succeeded in making public and political what was previously private and therefore apolitical. Following on this, the issue of violence against women has been integrated into the general discourse on human rights, "allowing for a normative framework within which to invoke state responsibility and state accountability for the eradication of all forms of violence against women".

This focus on state responsibility and accountability has led to a number of governments enacting legislative measures. The effectiveness of these measures, however, is mitigated by the fact that an overwhelming majority of abused and battered women still demonstrate "a marked reluctance to approach police as a primary solution against male perpetrators of violence" and choose instead to seek help in their kinship networks.

The effectiveness of legislative measures can be further questioned given that "the passage of a case through the legal system can be agonizingly slow for women in crisis", a fact which is seen to argue not only for a change in the laws themselves but also in the manner in which those laws are administered. In this regard, a number of initiatives are seen to be essential, including training for the judiciary, lawyers and police and the elimination of the hostile atmosphere often prevalent in the courtroom and arising from a general presumption within the legal framework of complicity and submission by women in incidents of violence against them.

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[65]Summarized generally from Roberta Clarke, "Violence Against Women in the Caribbean: Some Indicators and Trends", unpublished paper prepared for the NGO Expert Meeting (Montreal, 1994).

Available information suggests that while most cases of violence against women are perpetrated by individuals the number of incidents which may seen as coincidental to increasing militarism in the region is rising. The increased militarism, itself, can be seen to be the result of economic inequities in various social and political systems and to have resulted in a higher threshold of tolerance for violence, as a means of conflict resolution, and based in part on state reasoning of the need to maintain internal security and law and order.

In light of the above, a number of needs and challenges facing women in the region have been identified, including:

1. More information on the "catalytic factors inducing violent behaviour" in order to enable the development of programs that can respond to "women's immediate need for treatment and protection";
2. A reframing of the issue to focus more sharply on the "way in which the construction of the male gender is central to an understanding of violence in society";
3. Development of an approach to challenge the increasing tolerance of a culture of violence in the region;
4. Development of an understanding of "the relationship between socio-economic inequality and women's inability to resist many forms of violence".
5. Collection of comparative data on the forms and incidence of violence against women, including violence related to the trafficking in women;
6. A review of judicial and police procedures employed in the region;
7. Development of minimum standards for state treatment of violence against women, and;
8. Collaboration with human rights organizations and women's rights organizations in the "monitoring of violence against women in especially difficult circumstances, such as displaced women and women in countries of civil conflict".

B. Latin America[44]

When considering the situation of women in Latin America and the incidents of violence against them, three factors must be recognized as making them particularly vulnerable. These factors are age, ethnicity and social class.

The positive developments in a number of countries in the region, therefore -- including reform of civil codes, the abolition of legal restrictions on women's civil rights, and ratification by all countries in the region of the Women's Convention -- must be assumed to have had only a minimal positive impact on the situation of women falling into one or more of the above three categories. It must also be recognized that in spite of the positive measures taken by governments, de facto discrimination and violence against women remain common, a fact which demonstrates once again that a pronounced gap between law and reality is the rule rather than exception.

In order to address this situation, therefore, women's groups in the region have adopted two approaches.

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[44]General summary of Giulia Tamayo, "Overview from Latin America", unpublished paper prepared for the NGO Expert Meeting (Montreal, 1994).

First, they have undertaken programs to produce their own resources. These initiatives include developing specialized services and solidarity among women and implementing strategies "designed to have an impact on their countries' social consciences" through public campaigns and use of the media. As well, grassroots organizations and NGOs have set up literacy programs on women's fundamental rights, including training for *promotoas/orientadoras* (women providing legal advice in poorer communities).

Second, women's groups have and continue to demand from states "public policies and the institutionalization of measures to prevent and remedy violence against women". Initiatives in this area, however, have generally been less successful than those carried out on a community and non-governmental level. This lack of success is due, in part, to the continued reluctance of states to incorporate constitutional and legal proposals into existing frameworks. As a result, the only area in which an improvement has been seen is that of measures to address the problem of family violence and even there problems persist, including minimal official protection for women, inadequate resources, and too few shelters for battered women.

Implementation of the above two strategies has been accomplished, in part, by women forming links on a regional level. These links (e.g. the Latin American Committee for the Defense of Women's Rights (CLADEM), Entre Mujers Network, Acciones de urgencia, Red Latinoamericana Contra la Violencias Hacia la Mujer) have also served to facilitate the exchange of information on experiences on training and legal services, promote discussions on initiatives for constitutional and legal reform, offer protection of "women's fundamental rights and freedoms by alerting and pressuring authorities in critical cases" and generally "strengthen the fight against violence".

In aid of the goal of collecting information and producing reports on the current situation of women in Latin America a number of priority areas have been identified, including:

a) family violence;

b) urban violence (sexual assault, restrictions on freedom to transit, circulation of arms resulting in a high incidence of crime, and death squads who claim as their victims prostitutes, street children and homosexuals);

c) violence against women who participate in social and political activism (arbitrary detentions, selective assassinations, rape of detainees, political persecution);

d) violence against women within armed conflicts (massacres of non-combatants, extermination of indigenous peoples, forced recruitment and labour, displacement of women and refugees, forced sexual relations, spoliation of means of vital sustenance, eviction from lands);

e) violence against women due to their limited access to the labour market and their precarious position within it (sexual harassment, forced migration, sterilization and/or separation from family, high-risk working conditions, obligatory consumption of "company goods" and/or retention of pay, denial of right to unionization, inhuman working hours and conditions);

f) the traffic of women and sexual slavery at national and international levels (including state participation in the sex trade);

g) institutional violence in regards to women's reproductive and sexual rights (legal persecution of women who interrupt a pregnancy, the high incidence of unsanitary clandestine abortions, the interference of religious fundamentalism in women's personal lives, forced continuance of undesired pregnancies, coercive population control, unethical reproductive experimentation on women's bodies, restrictions on and violence against women on account of their sexual preferences).

While the themes for studies have necessarily had to be limited given the scope of the problems facing women, that scope may well increase given that new patterns of violence against women have been identified in the region. In general terms, this violence is seen to have emerged over the past fifteen years as a result of structural adjustment policies that have not been accompanied by democratization of the structures of power themselves. Specifically, the effect of these policies has been to erode further the already weak position of women. Evidence of this erosion can be found in the facts that:

a) more than 25 per cent of households are headed by women, requiring that they support their families by accepting intolerable working conditions;

b) younger women are finding it increasingly difficult to gain access to the labour market and therefore are forced into accepting situations in which sexual exploitation and/or harassment are endemic;

c) recourse to prostitution has risen and with it the problem of AIDS;

d) foreign workers have been caught in "nets of sexual slavery and forced labour", with documented cases of the murder of these women when they have tried to escape.

The gravity of the situation of women as a result of traditional attitudes, resistance in society to change, and ill-conceived structural adjustment programs has been exacerbated by the existence of internal armed conflict in some countries that has led those governments to enact internal security or anti-subversive legislation. Consistent with experience in other regions of the world, the enactment of these laws and the manner in which they are applied has resulted in women who work in poorer rural and urban zones becoming the targets of arbitrary detention and hostile police actions and persecution, situations in which torture, including sexual abuse, are common.

Two further points need to be made here.

First, it must be acknowledged that for women in many parts of Latin America there exists a limitation on their access to the administration of justice generally and particularly in cases of domestic and sexual violence. One aspect of this limited access arises from the common practice of judges "to underestimate and neglect the consequences for women of these types of violence" and it remains true that "In all of Latin America there exist no specific processal rights for female victims of violence. Impunity for the aggressors in these cases is always the result."

The second point relates to actions taken by President Fujimori of Peru that can be broadly characterized as "complete governmental disregard for global and regional standards of human rights" resulting in a philosophy whereby all laws and abuses relating to human rights are considered an internal affair. This precedent, established in Peru through the adoption of a new constitution following the self-coup in 1992, "removed the provision of equality of opportunities and responsibilities between women and men. No longer are social, economic and cultural rights considered human rights. Global standards of human rights are now submitted to internal interpretation and are no longer automatically

law [as they were under the previous constitution in Peru]." These changes in the constitution and the attitude of the government as evidenced in the measures taken by the President are seen as having introduced into the region a dangerous position, with the potential for similar stances being adopted by other governments at any time in the future.

C. South Asia[67]

For women in South Asia facing a rise in "religious specificity", i.e. special-pleading for exemption to universally accepted human rights standards that has led to an increase in violence against women, the reaffirmation of the universality of human rights has been identified as a priority.

Efforts to reaffirm universality have been largely manifested in the focus given to the rise of fundamentalism and the strict application of religious law, both of which foster a basic level of discrimination against women that not only leads to violence but prevents the victims from seeking remedy and impedes the provision of correction. It is also important to underline here that in some countries the punishments prescribed by religious law exceed those provided for in criminal law, for example, the application of the death penalty against a woman for adultery, under religious law and in societies where capital punishment for this offense is not prescribed in the criminal code.

Fundamentalism in South Asia must also be seen to compound if not actually create an attitude in which women "are invisible" and, through the activities of fundamentalists and the strict application of religious law are increasingly deprived of health services, economic advancement and development. Stated simply, the present reality in South Asia is that there is a conflict between religious freedom and women's rights that must be addressed and could perhaps be best addressed by reclaiming the human rights tradition existing in sources other than the Western one. That this goal may be made more difficult because of the absence in South Asia of a regional human rights mechanism and arrangement similar to the Organization of American States and the Inter-American Commission on Human Rights must be considered and efforts made to overcome this obstacle if discrimination against women and the violence it engenders are not to rise further.

D. Africa[68]

Violence against women is one of the most serious, pervasive and widespread gender-specific violations of human rights in Africa. More tellingly, neither the causes and reasons for this violence nor the consequences of the violence and its negative impact on the capacity of women to enjoy fundamental rights are understood.

The forms violence against women commonly takes in Africa include the following:

1. Physical and psychological violence within the family unit (nucleus or extended). This includes physical assaults by husband and lovers, co-wives and in-laws.
2. Sexual abuse including rape, incest and sexual harassment in schools, on the job and in most public places. Rape is increasingly an ever-present risk that women in Africa face, including incidents of mass-rapes, as well as gang rapes in public places while crowds look on. The

[67]Sara Hossain, general summary, unpublished notes prepared for NGO Expert Meeting, (Montreal, 1994).

[68]General summary "Violence Against Women in Africa" by Florence Butegwa, unpublished paper prepared for the NGO Expert Meeting (Montreal, 1994).

frequency of these incidents reflects a general attitude in which the woman is blamed "for being in a place where the risk of rape existed" and indicates that actions taken by state authorities have been inadequate in terms of deterring would-be rapists. Incidents of rape in situations of armed conflict have also been documented with the perpetrators being both government and insurgent troops who use rape as a form of punishment for the woman and/or her community. In some cases the rape was known to be politically motivated, that is, directed against a woman suspected of supporting the "enemy". Rape has also been used as a means of torture to force women "to disclose the whereabouts of male relatives who are suspected [of being] opponents of one political group or another".

As well, the practice of harassment for sexual favours is commonly used by employers, school authorities and, increasingly, immigration and custom officials at border crossings. In terms of the latter, this phenomenon has arisen because economic hardship has forced women to join the informal economic sector through cross-border trade in a modest number of goods. In these cases, officials are known to demand sexual favours in exchange for allowing women to enter the country and sell their products in the local markets.

3. Female genital mutilation also affects a substantial number of girls and women in Africa and in spite of the dangers posed by the practice and known to many women, it continues to be accepted because of the "social pressure to conform to what is perceived as a social norm in the community".

In response to these and other forms of violence against women, two strategies have been devised to provide relief to survivors of violence.

The first is generally focussed on the local level and includes:

a) counselling to assist the victim in making decisions "about her future relationship with the abuser and dependent children (if any)";

b) legal aid services where necessary, e.g. in cases of separation and divorce, child custody and support cases, and claims for compensation; and

c) provision of safe, temporary accommodation.

The second strategy focuses on the national level and includes:

a) legal reform;

b) legal education; and

c) gender sensitization within law enforcement agencies.

Whether or not these strategies will ultimately prove successful and effective will depend, at least in part, on the degree to which existing challenges can be met and obstacles overcome. These challenges and obstacles can be roughly categorized as follows:

1. Lack of data to support the claims of activists in terms of the magnitude of the problem and the serious consequences of violence against women. This lack of data is particularly important because governments continue to give the absence of reliable and credible information and statistics as a justification for inaction.

2. There continues to be a lack of appreciation of the extent of state responsibility "to end violence against women both in the private and public sphere" which suggests a need to compile information on the standards expected of states and ensure that this information is widely distributed to states for use in their reporting under various treaties and in legal reform.

3. There continues to be a need for compilation of precedents on laws which deal specifically with violence against women to guide both NGOs in lobbying efforts and governments in whatever remedial measures they may eventually take.

4. There is a need to develop the concept of the causes of violence "to include the immediate catalyst [and] the social structures which enable the violence to take place and also the various factors which perpetuate that violence". In order words, the correlation between economic structural adjustment programs and increased levels of violence against women must not only be more explicitly drawn but also more widely appreciated.

E. Middle East[69]

One of the priorities identified by women in the Middle East has been identified as that of providing adequate legal support to address the issue of violence against women generally and specifically the situation of women living in poverty, including provision of the means through which to give due attention to their health and educational needs.

Acknowledging that the subject of violence against women arises from a very specific set of circumstances in the Middle East and the Arab World is vital if violence against women in this region is to be truly understood. This specificity is manifested in a number of forms the violence takes.

The first can be seen as violence arising from political disputes, leading to situations where women are subjected to "extreme physical and moral oppression" arising from actions by the authorities of an occupying power, members of warring factions or as coincidental expressions of conditions in countries "under siege".

Economic violence may be seen as the second form and should generally be understood to be the result of a failure to consider the consequences of economic policies such as laissez-faire which is often characterized by inflation, unemployment and the abandonment of the needs of the poor. In these situations the effects on women tend to be harshest, as evidenced in higher levels of hunger, disease, lack of access to the labour force, incidents of rape, recourse to prostitution, a generally unsafe environment and an absence of education and health services for women.

The third form may be interpreted as arising from traditions and behaviours within the context of a predominantly patriarchal mentality that perpetrates violence against women. Specific practices resulting from this mentality include female genital mutilation, interference in a woman's reproductive rights and subjugation of young girls by beatings in an effort to "bring them up according to norms much more strict than [those] for boys, and which confirm in their minds a belief in their inequality to boys and in their weakness".

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[69]General summary of "Commentary on the Issue of Violence Against Women, Causes and Consequences in the Arab World and the Middle East", by Tahany El-Gebaly, unpublished prepared for the NGO Expert Meeting (Montreal, 1994).

Violence in the family is the fourth form of violence and is characterized as being practised "according to cultural norms and class structure", with the civil rights of women generally not upheld through law.

In response to these and other practices that mitigate against equal status for and treatment of women, and as is the case in other regions, women in the Middle East have increasingly formed social help and family counselling networks to deal with all the forms of violence against women, including social violence. The extent of this social violence and indeed other forms, however, is not truly known because of the lack of statistics and information on judicial remedies available.

Again, bearing in the mind the specific set of political and social conditions that currently prevail in the Middle East, the true scope and nature of violence against women may only be finally addressed by conducting a study of the "pervading political and/or regional discourse and its effect on the disempowerment of women in societies". Within this study it may prove possible also to consider the political and economic degeneration currently being experienced in a number of countries in the Middle East, along with violence perpetrated "under the guise of political and religious beliefs" that continue to victimize women.

F. Summary and Recommendations

Summary

The above very brief descriptions of the situation of women in various regions of the world have within them a number of common themes which can, if adopted, be used to outline in broad terms the main areas of focus in the work of the Special Rapporteur. These common themes may be described as follows:

1. There remains a need for accurate and comprehensive documentation and information on violence against women.
2. Situations of internal or transborder armed conflict create an environment conducive to acts of violence against women and discrimination against women.
3. Incidents of domestic violence are common to women in all regions of the world and are, within the character of each society, a manifestation of cultural and traditional practices as well as attitudes that have traditionally subordinated women.
4. As a rule, women do not have equal and effective access to the justice system and their demonstrated reluctance to use the access that is available is likely to arise from a number of factors including fear of retribution, fear of social stigmatization, and recognition of the fact that at least in some countries laws actively discriminate against and penalize women for acts of violence committed against them.
5. As a response to failures in social and legal institutions in to protect women against violence and to provide meaningful remedy when incidents occur, women often take recourse in community-based and women's support networks and systems.
6. In every region of the world it is constantly necessary to reaffirm the universality of human rights and to remind law-makers and authorities that the international standards of human rights apply equally to women.

7. A number of the causes and consequences of violence against women -- e.g. disparities in opportunity, health, education, labour -- underline the importance of viewing all human rights as indivisible and accepting that the realization of economic, social and cultural rights is fundamental for women to the realization of civil and political rights.

8. The lack of an effective enjoyment of the right to freedom of expression for women in all parts of the world contributes significantly to the "invisibility of violence against women" in the individual and collective consciousness.

Recommendations

1. A general recommendation was put forward to the effect that a broad framework of priorities had already been provided through the three areas identified in the VAW Declaration as requiring attention, namely, domestic violence, violence in the community and violations by the state. The task, therefore, was seen to revolve more around the question of the order in which these areas would be taken and which particular aspects of violence evident in each of them would be addressed. It was therefore further recommended that emphasis be placed on the areas in the order in which they are given in the VAW Declaration, viz. domestic violence, violence in the community and violations by the state.

2. In terms of determining the priority to be given to more specific aspects of violence under these three "main headings" two possible approaches were identified. The first would allow the nature and content of the information received to determine the priorities. The second would depend on the Special Rapporteur to determine the priorities, in consultation with diverse and representative groups.

   The urgency attached to the question of violence against women and the determination of women to ensure that the profile of the issue is raised even further on the international agenda resulted in the recommendation that the Special Rapporteur not wait to see what patterns emerge in the information received before deciding the particular priority areas requiring action.

   It was recommended, therefore, that the selection of themes, based on those that most uniquely show what human rights mean when gender is a primary defining factor be used and priority placed on areas such as sexual assault and torture, and forced pregnancy.

   The inclusion of the relationship between the realization and/or non-realization of socio-economic rights by women and associated incidents of violence was seen as possible through an approach in which the status or non-status of these rights was seen to be a contributing factor to forms of violence against women. In other words, that consideration of this element could well be taken up under the "causes" and/or "consequences" aspect(s) of the mandate.

   This approach to the socio-economic factors resulting from or leading to violence was also seen to be consistent with the principle of the indivisibility of rights, viz. that the degree to which there is the effective enjoyment of one or more rights has a direct bearing on the effective enjoyment of other rights. A cautionary note was sounded, however, to the effect that no direct correlation between violations of economic, social and cultural rights and violence against women should be drawn in order not to dilute the strength of the mandate in terms of the emphasis given to domestic violence, violence in the community and acts of violence perpetrated or condoned by the State.

3. It was recommended that a thematic framework be adopted rather than employing one involving the compilation of information on a country-by-country basis. An example of such a theme orientation would be to give priority to investigation and reporting on the situation of women in areas of armed conflict, the degree to which women enjoy an effective right to freedom of expression, or the use of rape and sexual assault as a form of torture and the means of intimidation by both public and private actors.

4. It was further recommended that within this thematic approach, the right to freedom of opinion and expression for women be emphasized.

5. However worthy various subjects for study may be it was recommended that the Special Rapporteur not assume responsibility for the generation of such theoretical or academic studies (that being one of the primary tasks of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities) but rather take an approach of active investigation, communication with governments, and reporting to the Commission on Human Rights and the Commission on the Status of Women.

6. It was recommended that the Special Rapporteur give careful consideration to the situations in some countries in which the law actively works against women. The example of the provision in law and the courts' handling of cases of prostitution was cited, where women are sentenced to as many as three years' imprisonment while the men, the prostitutes' clients, are considered in law to be and treated by the courts as witnesses.

7. Acknowledging the increase in tension between religious law and practice and secular forms of governance in many regions, it was strongly recommended that the Special Rapporteur give particular attention to violence against women arising from religious fundamentalism. The point was made that this attention should not be confined to tensions arising from differing views in the Islamic world but should also include consideration of the situation of women in societies and communities where the tenets of other religions dominate, including those religions common to the Western world.

VI. Documenting Violence Against Women: Submissions to the Special Rapporteur

A. The Existing NGO Documentation Capacity

In considering the capacity of NGOs to document cases and patterns of violence against women and provide that information to the Special Rapporteur it is necessary to acknowledge that three problems presently exist and are likely to continue to exist for some time. These problems can also be seen to be needs and roughly described in the following manner:

1. the need to ensure that relevant existing information is forwarded to the rapporteur;
2. the need to prevent system overload through the transfer of untimely and unreliable information, and;
3. the need to fill the gaps in terms of information still required once those gaps have, in fact, been identified.[70]

[70]Laurie Wiseberg, unpublished notes prepared NGO Expert Meeting (Montreal, 1994).

The possibility of responding to these three needs may exist, to a greater or lesser degree, with careful use of information provided through one or more the following six identified sources: governments; international NGOs, regional bodies, UN mechanisms and agencies and similar bodies; development NGOs and those organizations and associations working on the issues of the status, situation and rights of women; researchers for academic studies and others involved in similar endeavours such as legal research; the media, and; case testimonies provided by individual victims.[71]

Support for the Special Rapporteur from NGOs is generally seen to be possible through two areas: first, in seeking and receiving information for transmission; and second, in recommending actions the Rapporteur may want to take in response to a given situation or general pattern of violence that has emerged.[72]

In terms of seeking and receiving information it has to be acknowledged that most existing information is not in a form that can be used by the Special Rapporteur. There are, therefore, three areas to consider:

1. availability, relating to situations where information is known to exist on a violation such as the rape of women in areas of armed conflict but is not susceptible to effective use until or unless an NGO or other agency takes the raw data and verifies and organizes it;
2. categorization, relating to information may be verified and organized but pertains to violations and areas that do not readily fit into the current practice of human rights and the existing system, as has been the case until very recently on information relating to the trafficking in women; and,
3. state accountability, relating to the need for analysis of the available information in order to permit the development of a mechanism demonstrating accountability and in which accountability is understood to include due diligence (encompassing prevention, investigation and punishment), and legal reform to ensure that in the penal code abuses are codified in domestic law and to address the responsibility of states to provide remedy.

With regard to increasing the information-gathering and documentation capacities of non-governmental organizations it is necessary to consider the role of grass roots organizations and development NGOs. Any consideration of the relationship between them and the Special Rapporteur must acknowledge that "the large base of experience and knowledge [in the women's movement] about confronting violence 'on the ground' is limited by the fact that only a few [organizations] know the UN system well -- how to access it and make it responsive; that only another few are skilled in documentation".[73]

In spite of this limitation in terms of a working knowledge of the UN human rights system, a number of actions are perceived to be within the competence and experience of such women's groups, actions which can indeed support the Special Rapporteur. These actions include:

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[71]Ibid.

[72]Dorothy Thomas, Human Rights Watch, unpublished notes in preparation for the NGO Expert Meeting, (Montreal, 1994).

[73]Margaret Schuler, "Contribution of NGOs in Support of the Work of the Special Rapporteur on Violence against Women", unpublished paper in preparation for NGO Expert Meeting (Montreal, 1994).

1. expanding the base of skilled human rights documenters and monitors through provision of training and practice in documentation;
2. identifying cases and issues and reporting perceived trends to the Special Rapporteur to facilitate the development of a plan and a methodology for investigation and reporting;
3. providing specific documents and statistics of a totally credible and unassailable nature to assist the Special Rapporteur in her efforts to underscore both the prevalence of violence against women and the absolute need for effective and continuous action aimed at its eradication;
4. contributing to the conceptualization of violence by articulating new ways of categorizing and perceiving violence, especially through the incorporation of violence committed in the private sphere;
5. applying pressure at the local, national and regional levels to ensure that neither the issue nor the mandate of the Special Rapporteur can be ignored by governments and international institutions;
6. publicizing information and carrying out rights education programs as part of a wider effort to develop an informed public worldwide.

In terms of development NGOs it is generally acknowledged that they could render vital assistance to the information-gathering and reporting needs were several long-standing problems in the relationship between development and human rights activities finally resolved.

In general, the problems can be characterized as reluctance by development to engage in activities that are, for their purposes, seen as being too political.

Thus it is that while development NGOs may be aware of an unacceptable and even deplorable human rights situation in a given country they often do not speak about that situation in explicitly human rights terms out of concern that to do so would jeopardize their ability to work in that country. In a similar vein, development NGOs have demonstrated a pronounced reluctance, and indeed in certain cases, even refusal to consider using the complaints procedures and reporting lines available to them and victims of violations through the treaty bodies because these complaint procedures and reporting lines are likewise seen to be too political.[74]

Given the above difficulties, it is necessary that two things be acknowledged. First, that the basic problem of how to make information known and accessible remains. And second, that in many cases practices of informal censorship by both the state and non-state actors -- e.g. disappearance, harassment -- compound the problem. **There was a need, therefore, in addition to those noted above, to determine what level of evidence of violations NGOs should put together and to find a way to create a system of regional collaboration to ensure the timely transfer of information and to offset the effects of informal censorship where and when it occurs.**

The experience gained in the collection of information and preparation of documentation on the situation of women in the territory of the former Yugoslavia must also be considered as instructive when considering how information needs can be met.

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[74]Frances D'Souza, unpublished notes in preparation for the NGO Expert Meeting, (Montreal, 1994).

In this case, information was first provided by very few sources, including the media which did, to some degree, succeed in raising the profile of the situation to the point where the international community felt compelled to act. The information being communicated, however, was largely raw and anecdotal in nature. The flow of refugees out of regions affected by the war and the movement of internally displaced persons within territories significantly complicated the difficulties encountered in attempts to transform this raw information and anecdotes into sound statistical estimates of the number of persons involved, the number and nature of violations, the identity of victims and the scope of the problems that already had or were likely to result from the conflict.[75]

Given this and for the purposes of providing reliable information to the Special Rapporteur **it must be seen as essential that when dealing with situations of internal or trans-border armed conflict a system be devised to abstract from whatever reliable information may be available a reasonable statistical conclusion in terms of the location, prevalence and scope of violations.** In those instances where the testimony of victims is used to assist the process, it is equally essential that due attention be given to their needs and that any fact-finding mission be conducted with full awareness of other missions which may be occurring either simultaneously or within a relatively short time period.[76]

The latter point is emphasized for two reasons. First, lack of awareness of other missions sometimes leads to a duplication of effort. And second, an ongoing cycle of missions inevitably results in victims having to recount their experiences time and time again, an ordeal that is known to have led in some instances to suicide, and in others to a general feeling of disillusionment and/or a distinct delay in the recovery and healing processes.[77]

B. Summary and Recommendations

Summary

A number of possibilities exist in terms of how the process of gathering information and providing documentation to the Special Rapporteur can be handled. Among them are the following:

1. the creation of a documentation centre to facilitate the holding of information in a central location;
2. the recruitment of lawyers' unions and bar associations to assist in the required legal documentation;
3. the development of criteria on how each case should be documented;
4. the use of community centres as local documentation centres with assistance provided to them by local, regional and international NGOs familiar with the UN system;
5. the inclusion in documentation of descriptions of the kinds of violence committed against women; and
6. the organization of regional networks for the purposes of gathering information with a view to creating a system for inter-regional networking at a later date.

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[75]Shana Swiss, "Rape as a Crime of War: A Medical Perspective", *Jama*, Vol. 270, No. 5 (Aug. 4, 1993), pp. 612-615.

[76]Ibid.

[77]Ibid.

In addition to these points, it should be recalled that the UN High Commissioner for Human Rights can play an important role in facilitating the work to be carried out on the question of violence against women. At the very least, the High Commissioner can be encouraged, as the individual with responsibility for the overall operation of the UN Centre for Human Rights, to pursue the issue of improving the capacity of the Centre to handle documentation in a coherent and expeditious manner not only in support of the immediate needs of the Special Rapporteur but also in support of discussions currently under way at the UN on the development of an early-warning system.

Recommendations

In support of improving and increasing the capacity of NGOs to provide accurate information to the Special Rapporteur, and to facilitate receipt of relevant information from other sources, including governments, the following recommendations were made:

1. that the Special Rapporteur communicate with governments and stress the need to receive gender-disaggregated information from them;
2. that guidelines for governments, inter-governmental agencies and NGOs be prepared in terms of what kind of information is needed and in what form it should be presented;
3. that the base of skilled NGO human rights documenters and monitors be expanded through provision of training and practice; and,
4. that NGOs monitor compliance at the state level and convey to the Special Rapporteur their findings as to the degree to which states are meeting their obligations under the relevant international human rights instruments.

VII. The Potential for Cooperative Relationships

A. UN Human Rights Mechanisms

Over the past few years the UNCHR has placed a certain emphasis on the need to streamline the work of the international human rights system and take steps to minimize if not avoid duplication and redundancy in approaches and programming. This view was reiterated at the UN World Conference on Human Rights. The challenge, therefore, in considering the potential for developing cooperative relationships between the Special Rapporteur and other UN mechanisms is to strike an appropriate balance.

UNCHR Technical Mechanisms

Clearly, the Rapporteur will need to work independently to ensure that the issue of violence against women receives the attention it requires and deserve but there is also a need to work cooperatively to ensure that the situation of women is adequately considered in the reports prepared through other mechanisms and to enhance the prospect of an eventual re-interpretation of human rights to the point where the rights of women are automatically assumed to be human rights and addressed accordingly.

The need to avoid duplication of work should be seen as a valid basis on which to promote cooperation. Similarly, the requirement that all special rapporteurs, workings groups and special representatives include in their report gender-disaggregated information supports the argument for more cooperative efforts. The inclusion of gender-disaggregated information in and of itself, however,

will not be sufficient. For example, in the 1994 reports the inclusion of such information could be fairly characterized in a number of instances as being of questionable value. There is little if anything to be gained from a simple reference in the report of the Working Group on Disappearances to the fact that in such-and-such a year three people disappeared, one of whom was a woman. Clearly, numbers alone will not and cannot provide any insight into the circumstances leading up to and surrounding a given violation. In other words, the numbers may well measure the frequency of incidents but in terms of violence against women they will not provide any meaningful data on the causes and consequences.

For this reason and based on the example cited above from the report of the Special Rapporteur on Torture, demonstrating the need for more attention to be paid to what it means to be a woman, the eventual full integration of women's human rights into the investigative and monitoring system would seem to depend on the Special Rapporteur on Violence against Women working with the various mechanisms on a consistent basis if violations of women's human rights are to be seen, investigated and reported in all their dimensions. Exactly how this cooperation will be expressed, however, over and above the simple practice of ensuring the exchange of all relevant information, is something that only the Rapporteur can determine over time. That this cooperation must be based on the level of support available and received from the Centre for Human Rights is a given. It is also a given that this cooperation will depend on the degree to which it is welcomed by other rapporteurs, the working groups, and special representatives.

While not strictly a question of cooperation, it may be useful here to consider the aspect of the mandate involving the conduct of fact-finding missions inasmuch as the resolution authorizing the appointment specifically allows for such missions to be undertaken "either separately or jointly with other special rapporteurs and working groups".[78]

The essential values of fact-finding and investigative missions may be roughly defined as: 1) their potential for raising the profile of the Special Rapporteur's mandate; 2) as a means to increase pressure on governments to supply information and meet their obligations to respect women's human rights; 3) as a source through which to enhance the work of local and international women's rights organizations; and 4) as a point of access enabling the rapporteur to have direct contact with victims.[79] These fact-finding missions should also be seen as an essential element in the international effort to report on incidents of violence against women, provide gender analysis and promote better data collection.

Conversely, the major weakness in the program of missions is that they are entirely dependent upon a government's willingness "to invite" the rapporteur to visit, that is, "governments are under no obligation to give their consent to a mission".[80] It is therefore true that it often takes a long time before a government will agree to a mission, if ever.

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[78]UNCHR resolution L.8/Rev.1, op. para. 10.

[79]Cees Flinterman, unpublished notes in preparation for the NGO Expert Meeting (Montreal, 1994).

[80]Ibid.

The types of missions that are traditionally carried out can be characterized in the following three ways:

1. missions relating to priority area(s) established by the Special Rapporteur;
2. incidental missions relating to information received by the Special Rapporteur and pointing to possible widespread patterns of violence against women and at gross and systematic violations of human rights"; and
3. joint missions with other Special Rapporteurs.[81]

Not surprisingly, the issue of missions is a highly sensitive one since most missions presuppose that human rights are being violated on a scale massive enough to warrant special investigation. The corollary to this then is that most missions presuppose that the government is wrong in terms of policies and practices and has failed to exercise due diligence in preventing violations.

Women's Focal Point

In addition to the question of cooperation with other Special Procedures, that is, the technical aspects of the UN's human rights machinery, there is potential for cooperation in a more general sense at the Centre for Human Rights.

Following the Vienna World Conference on Human Rights, the position of Women's Focal Point was created at the Centre for Human Rights and assigned a number of responsibilities. Included among them were the following:[82]

1. ensuring implementation of a plan of activities for the integration of women's human rights into the mainstream of human rights activities;
2. coordinating action within the Centre to ensure that "[a] gender perspective and gender neutral language [are] comprehensively integrated into all the Centre's activities";
3. ensuring "the inclusion of specific information and analysis into the reports prepared by the staff and experts appointed under the various procedures and mechanisms with a view to devising responses to the violations of ... human rights to which some women are subjected";
4. holding regular briefings and discussions with chiefs of branches and staff to identify "specific gender information in their respective mandates";
5. increasing the Centre's effectiveness in addressing the promotion and protection of human rights from a gender perspective;
6. ensuring that the Special Rapporteur receive adequate assistance in carrying out the mandate;
7. facilitating coordination and cooperation between the Special Rapporteur, the Division for the Advancement of Women, the CSW, CEDAW and other human rights treaty bodies;
8. ensuring that information relevant to the Special Rapporteur in the reports of other rapporteurs, working groups and representatives is summarized and provided to her;
9. facilitating contacts with regional organizations, governments and NGOs in countries of concern in connection with preparations for and organization of field visits.

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[81]Ibid.

[82]Rukia Hussen-Aden, general summary from "The Role of the Focal Point for Human Rights of Women", unpublished paper prepared for NGO Expert Meeting, (Montreal, 1994).

B. Cooperation with CEDAW

Cooperation between the Special Rapporteur and CEDAW is vital in that the Women's Convention is a key instrument for addressing the question of violence as a form of discrimination against women. The relationship should, therefore, by definition and in practice, be a mutually reinforcing one.

It would seem that the groundwork exists for this mutually reinforcing character to be realized. While CEDAW has thus far only decided to recommend that the Special Rapporteur's mandate should take into account the Committee's work and General Recommendation No. 19, the means already exist whereby the Special Rapporteur may request assistance from the Division for the Advancement of Women in a number of areas, including:

1. information on violence against women in states that are party to the Women's Convention and have submitted reports to CEDAW;
2. clarification, if needed, of General Recommendation No. 19, in terms of how CEDAW uses it in the constructive dialogue with states parties and how they respond to it;
3. provision for specific members of CEDAW to support the Special Rapporteur in a given mission or recommend to her other women from the non-governmental community who can assist;
4. support from CEDAW in efforts to ensure that the work of the Special Rapporteur becomes as visible as possible, (for instance through a cooperative use of the media).[83]

Similarly, there already exists the means by which the Division can request of the Special Rapporteur a number of things, including:

1. that she contribute to CEDAW's effort to publicize more widely both the Women's Convention and General Recommendation No. 19;
2. that she contribute to the effort to secure universal ratification of the Women's Convention and the withdrawal of reservations filed by states already a party to it; and,
3. that she support the adoption of an optional protocol to the Women's Convention, allowing for an individual right of complaint.[84]

Given that the Division for the Advancement of Women administers the Women's Convention there are also areas in which the Division, separate from CEDAW, can work with the Special Rapporteur. The Division should therefore be seen as an important contributor in three key areas: first, in monitoring violence against women under the Women's Convention as well as the VAW Declaration; second, as a participant in the process that will help to determine how the work of the Special Rapporteur will be focussed in the initial three-year period of the mandate; and, third, by providing the Special Rapporteur with information contained in the reports submitted by states parties to CEDAW.[85]

The need for cooperation also exists in response to adoption at the 38th session of the Commission on Status of Women, of two resolutions concerning violence against women.

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[83]Carlota Bustelo, "Relationship between the Special Rapporteur and CEDAW", unpublished notes in preparation of the NGO Expert Meeting (Montreal, 1994).

[84]Ibid.

[85]Philomena Kintu, Division for the Advancement of Women, in comments at the NGO Expert Meeting, (Montreal, 1994).

Operative paragraph 8 of the first resolution (38/3) "Requests the Secretary-General to report to the Commission at its thirty-ninth session on the activities of the United Nations bodies and institutions concerned with crime prevention with regard to the question of violence against women".

Operative paragraph 11 of the second resolution (38/7) "Requests the Secretary-General to submit to the Commission at its thirty-ninth session a copy of his report to the General Assembly at its forty-ninth session relative to violence against women migrant workers, which should include the reports to be submitted by the Special Rapporteur on Violence against Women to the Centre for Human Rights, relevant United Nations functional bodies and specialized agencies, intergovernmental organizations and non-governmental organizations".

The Division for the Advancement of Women, as primary author, can and intends to consult with the Special Rapporteur in the preparation of these two reports.

C. Relationship with regional instruments: the Council of Europe[86]

The consensus resolution adopted by the General Assembly in 1993, creating the post of UN High Commissioner for Human Rights specifically confers upon the High Commissioner both the responsibility and the right to engage in dialogue with representatives of regional human rights bodies (e.g. Inter-American Commission on Human Rights). The purpose of such consultations is to identify common concerns and explore areas where greater cooperation may be possible in future.

At the same time, the UNCHR has, through adoption of various resolutions over the past several years expressed support for the eventual creation of a regional human rights mechanism in Asia.

Thus, it is entirely consistent with emerging UN practice that the Special Rapporteur may, from time to time, consult with representatives of regional systems on the subjects of women's human rights and violence against women. The basis on which the consultations may proceed and the degree to which cooperation is possible obviously will depend on the framework of each regional instrument. Nonetheless, a review of how the Council of Europe works and areas where the Council may both assist in and benefit from the work of the Special Rapporteur can be useful.

As a starting point, it should be noted that within the framework of the Council of Europe the promotion of equality between women and men is synonymous with the promotion of human rights[87] and that the rising levels of violence against women in Europe contributed to a series of initiatives intended to address this issue directly. Among them was the October, 1993, Third Ministerial Conference on Equality Between Women and Men with the theme of Strategies for the elimination of violence against women: the media and other means. One of the major outcomes of this meeting was an undertaking to elaborate and implement a concerted Plan of Action to combat violence against women, including the elaboration of appropriate legal instruments. Emphasis was also placed on the implementation of all existing international human rights instruments [including the European Convention and the Women's Convention] as a means of sanctioning and condemning all forms of violence against women.

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[86]Karen van Ebbenhorst Tengbergen, general summary of unpublished notes prepared for NGO Expert Meeting, (Montreal, 1994).

[87]Karen van Ebbenhorst Tengbergen, "The Council of Europe's Work in the Field of Violence against Women and the Instruments Used", unpublished paper prepared for the NGO Expert Meeting, (Montreal, 1994).

Through this same meeting of Ministers, the Council of Europe also took a significant step in affirming state responsibility by adopting language stipulating that "the responsibility of states is engaged with regard to acts of violence carried out by public officials and [...] may also be engaged with regard to private acts of violence if the state does not take action with sufficient diligence to prevent the violation of rights or investigate acts of violence, to sanction them and provide support for the victim". In other words, the Ministers opened the possibility of widening the scope of state responsibility to include actions by non-state actors.

In order to ensure timely follow-up to the initiatives outlined in the Ministers' statement a Group of Specialists was set up to begin work in the Fall of 1994. There are three points of focus in their work. First, to identify ... the different forms and aspects of violence against women "and the questions related to it which [can] be studied in the relevant fields of activity of the Council of Europe". Second, to carry out hearings of professionals "who are confronted with violence against women with a view to determining the questions which require action in the framework of the Council of Europe". And third, to elaborate "on this basis and having regard in particular to the Declaration on policies for combating violence against women in a democratic Europe ... [adopted in Rome, 21-22 October 1993] ... a Plan of Action to combat violence against women, which identifies the measures to be taken and the national, international, governmental and non-governmental institutions entrusted with or involved in its implementation".

As well, the Council of Europe had previously set up a Group of Specialists to look into the issues of forced prostitution and trafficking in women. The Group proposed that a "cross-cultural multidisciplinary study ... [be carried out] ... to explore the structural background on the 'demand' side of prostitution, i.e. the structure and mechanisms of male sexuality, in particular in the light of changing gender roles and attitudes in our societies".

In terms of legal standards the European Convention does allow for the individual right of petition and article 3, which prohibits torture or inhuman or degrading treatment or punishment and does not allow for any exception, is generally regarded as the article having the most resonance in relationship to issues on violence against women.

It may be helpful here to mention two further reforms to the European system currently under way in that they may further strengthen the protection of women's human rights. First, groundwork is being laid for the merger of the existing Commission and Court "into one single European Court of Human Rights". Once states have accepted this change through signature of the enabling protocol, the second reform will become effective, namely that "the jurisdiction of the new Court will be compulsory and not any longer subject to express acceptance by member states".

Balancing the assessment of the European system as one of the more fully realized regional mechanisms for the promotion and protection of human rights, is the fact that the European Convention has been under-utilized in terms of the protection it can afford for women's rights. Applicants under the existing right of complaint are predominantly male but it would be ill-advised to conclude from this fact that men experience violations of fundamental human rights more frequently than women. Rather, it would be more prudent to infer that "most women in Europe have not reached [an] overall degree of emancipation" which would facilitate an application to the Strasbourg organs.

In light of these initiatives with regard to violence against women, several areas where cooperation between the Council and the Special Rapporteur have been suggested.

First, in spite of the fact that the scope of the work is necessarily limited to Europe, the Council expressed interest in sharing the Special Rapporteur's expertise and experience. The potential for this this sharing of expertise was seen to rest in areas such as consultations on an annual or semi-annual basis and the use of the Centre for Human Rights in Geneva to facilitate exchanges of information.

Second, through these consultations and information-sharing activities and the resulting cross-fertilization of ideas the potential for devising well-targeted strategies and activities that would not, in and of themselves, entail a duplication of effort.

Third, and in the spirit of reciprocity, the Council of Europe gave an undertaking to ensure that the Special Rapporteur received all relevant documents in its possession on violence against women.

And, fourth, if and/or when advised by the Special Rapporteur of difficulties encountered in the European region, the Council of Europe undertook to extend to the Rapporteur all appropriate and necessary assistance.

D. Summary and Recommendations

As the above points demonstrate, the scope for cooperation between the Special Rapporteur and other mechanisms and bodies is fairly extensive although the range of possibilities specifically with other human rights mechanisms within the UNCHR remains to be established.

With reference to missions, however, a number of a points were raised in general discussion and must be included here.

1. Given the sensitivity attached to the question of missions and with particular reference to missions the Special Rapporteur may choose to make on the basis of a theme such as a domestic violence (the first type of mission) it was recommended that in deciding what missions to undertake the selection be made among states representing various legal cultures and, further, that the states so designated be informed that their selection was random and did not reflect any judgment of the Special Rapporteur on the magnitude of the problem of gender-violence in the private sphere in the state concerned.
2. With regard to joint missions with other rapporteurs, the objective of which would be to emphasize the women's human rights perspective of the integrity rights involved, it was recommended that priority consideration be given to a cooperative effort with the Special Rapporteur on Torture, the Working Group on Disappearances, the Working Group on Arbitrary Detention and the Special Rapporteur on Freedom of Opinion and Expression.
3. Given that the success of missions will depend in part on prior notification for NGOs in the field of women's human rights it was recommended that all necessary steps be taken to ensure that such notification is provided.
4. Inasmuch as at least part of any mission will be to meet with individuals and organizations it was recommended that a guarantee be secured from the government concerned that both NGOs and individuals will have free access to the Special Rapporteur during the time in-country.
5. Deriving from this question of access it was recommended that a guarantee by the government must be given to the Special Rapporteur, individuals, and NGOs that no retributive actions will be taken against anyone meeting with the Rapporteur.

6. It is generally recognized that people in the receiving country for an official UN mission often develop and hold unrealistically high expectations that the mission will result in a quasi-immediate improvement in circumstances and situations (e.g. rape victims in the territories of the former-Yugoslavia). It was therefore recommended that every effort be made to ensure that an overly optimistic view of possible results and potential remedies not be inadvertently expressed by the rapporteur during the course of the mission.

7. It was also recommended that a hierarchy of trauma not be created either in the planning stage or actual conduct of missions. In other words, the Rapporteur should not assume what violation is most important or which facet of the violation is most important. For example, rape may be the primary focus of the Special Rapporteur's mission but that focus cannot ignore "the additional trauma that women have experienced: death of loved ones, loss of home and community, dislocation, untreated illness and war-related injury".[88] Similarly, it is necessary for the Special Rapporteur to bear in mind that at the time of the mission individuals in the country visited may be consumed and preoccupied by different issues and/or violations such as lack of access to the justice system and services for trauma recovery, unsafe and inhuman working conditions, health services and education.

8. In terms of the prospect of a special relationship forming between the Special Rapporteur and CEDAW, the possibility that this might isolate the Special Rapporteur and inadvertently delay consideration of women's human rights within the larger human rights machinery, was acknowledged. It was therefore recommended that the mandate be seen as an evolving process. In the first year, the Special Rapporteur may in fact have a special relationship with CEDAW and the Commission on the Status of Women. The second and third years would then be used to establish a similarly mutually supportive relationship with, for example, the Committee against Torture and the Special Rapporteur on Freedom of Opinion and Expression.

Conclusion

It can be stated that the diversity of views expressed at this meeting of NGO experts, organized by the International Centre for Human Rights and Democratic Development, proved that such gatherings are essential if the mandate of the Special Rapporteur on Violence Against Women, Its Causes and Consequences is to be comprehensively implemented. The various degrees of emphasis participants placed on themes such as women in armed conflict, domestic violence, freedom of expression, economic and social rights, and the enforcement potential of a number of human rights instruments (in terms of addressing substantively violence against women) should not be seen as obstacles or mere matters of opinion. Neither should they be assumed to be differences that can be exploited by existing institutions in either the public or private sphere to maintain the status quo. Rather, the diversity of views and emphases must be understood to have underlined two facts.

First, the commentaries and discussions reinforced what women already know, namely that in every region of the world and in all kinds of societies they are victimized by a wide range of discriminatory policies and practices in which gender is the defining factor and of which violence

[88]Shana Swiss, op. cit., p. 614.

(physical, sexual and psychological) is the most extreme manifestation. Second, the meeting underscored that while women understandably approach the question from their own experiences there is a common will and the determination to devise a comprehensive framework through which both their specific needs can be addressed and the security of women worldwide effectively guaranteed, irrespective of the particular characteristics of any given society.

It was also evident from the meeting, however, that the common will and determination expressed will depend on a continuing and increasing participation of non-governmental organizations in both documentation and data collection related to violence against women, its causes and consequences. This participation must include not only a dedicated effort by international non-governmental organizations (INGO) to address violence against women but also the active involvement of community organizations and local associations. Following on this, the creation of regional networks to facilitate information exchange, data collection and documentation within regions must be seen as essential. Similarly, the eventual development of the means for information exchanges and cooperation on other tasks between regional networks is vital.

There are two main areas of focus for regional and local groups, INGOs, regional NGO networks, states, the United Nations and other intergovernmental agencies and fora. The first is to ensure that "The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity."[89] The second is to ensure that the following point is finally and without reservation accepted by both states and the United Nations itself. That is, that there already exists a comprehensive international framework in the International Bill of Human Rights through which violence against women can be addressed were individual states and the international community to choose to apply the provisions within that framework to the situation of women with a rigour equal to that evidenced in their interpretation and application in relationship to the situation of men.

Following on these two points, it can and should be argued that no obstacles presently exist to the full implementation and integration of women's human rights in the international human rights legal system.

It is a given, however, that implementation and integration depend on states meeting their responsibility to exercise due diligence. And the doctrine of due diligence must be understood to include "the duty 'to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights'."[90] That being said, the organization of the governmental apparatus must be seen to include the responsibility to develop national plans of action "to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women."[91] The VAW Declaration similarly encourages states to develop "appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration".[92]

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[89]UN Vienna Declaration and Programme of Action, article II B 3 (37).

[90]From Velasquez Rodriguez Case (Honduras), 4 Inter-Am. Ct. H.R. (ser. C) at 92, para. 166 (1988); cited by Rebecca Cook in "State Responsibility for Violations of Women's Human Rights", *Harvard Human Rights Journal*, Vol. 7, p. 170.

[91]UN Declaration on the Elimination of All Forms of Violence Against Women, article 4(e).

[92]Ibid., article 4(n).

As worthy as national plans of action and guidelines for implementation of the VAW Declaration may be, it must be recognized that they will not, in and of themselves, ensure that women's human rights are either fully respected or integrated into the international and national human rights systems. This is true for the simple reason that both action plans and guidelines depend on a sufficient political will to implement them. Given the perceived, and real, absence of that political will, participants identified three areas that must be addressed.

First, while reference was made in discussions to various Comments by the Human Rights Committee affirming, for example, state responsibility for non-state actions, the fact remains that a disproportionate number of the cases referred to the HRC are brought by men. As noted above with regard to the relatively low number of cases taken to the European Court by women, it can be assumed that this imbalance reflects the "invisibility" of women's human rights, that is, that the systemic abuse of women's human rights is not recognized. The corolary to this point is that there remains the lack of effective access to the international human rights system for women.

Second, while cause and effect cannot be proved, the increasing pressure for the drafting and adoption of an optional protocol to the Women's Convention (providing for an individual right of complaint) could be seen to arise in part from this general lack of effective access for women to other human rights instruments and their monitoring mechanisms.

Third, the campaign for the drafting and adoption of an optional protocol to the Women's Convention, may also be seen as a reaction to the overwhelming number of reservations states have filed and the exceptionally broad and vague language in which those reservations have been written.

On this third point, it may helpful to recall here that the international community has made several efforts to address the negative impact of reservations to instruments dealing with women's human rights. For example, the Vienna Declaration and Programme of Action states that "ways and means of addressing the particularly large number of reservations to the [Women's] Convention should be encouraged. Inter alia, the Committee on the Elimination of Discrimination against Women should continue its review of reservations to the Convention. *States are urged to withdraw reservations that are contrary to the object and purpose of the Convention or which are otherwise incompatible with international treaty law* [emphasis added]."[93] Similarly, resolution 94/45 adopted by the Commission on Human Rights and appointing the Special Rapporteur includes language to the effect that states "should avoid, as far as possible, the resort to reservations".[94] And the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, (adopted by the Inter-American Commission of Women on 19 April 1994 and subsequently adopted by the Organization of American States) stipulates that "Any State may, at the time of approval, signature, ratification, or accession, make reservations to this Convention provided that such reservations are: *a) not incompatible with the object and purpose of the Convention, and b) not of a general nature and relate to one or more specific provisions* [emphasis added]."[95]

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[93]UN Vienna Declaration and Programme of Action, Part II B. 3 (39).

[94]UNCHR resolution 94/45, pream. para. 12.

[95]Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, article 18(a)(b), 19 April 1994.

Overcoming the problems and obstacles identified above is, by definition, a long-term process, involving ongoing discussions at the Commmission for Human Rights, development of the dialogue between women's organizations especially and the High Commissioner for Human Rights and, of course, at the World Conference in Beijing.

In terms of the immediate future, viz. Beijing, the consensus of the meeting was that the Special Rapporteur on Violence against Women can play a central and highly visible role in a number of ways, including by preparing and presenting to the Conference a report building on the key elements in the first report to the Commission on Human Rights in February, 1995.

To confine participation at the Conference to the report alone, however, would fail to make full use of the opportunity the Conference presents to raise the profile of the Special Rapporteur's mandate and the issue of violence against women. While a number of initiatives are possible in this regard, two are emphasized here.

First, there is a need to assist the UN High Commissioner for Human Rights to become more actively involved in the issue of violence against women. Participants therefore agreed that a consultation be organized, jointly sponsored by the Special Rapporteur and the High Commissioner either prior to the Conference or in Beijing on, for example, the question of how rapporteurs and other human rights mechanisms can integrate the gender dimension into their investigations, mission reports and recommendations.[96]

Second, the Conference was seen as an opportunity to mark the beginning of a joint project between the Division for the Advancement of Women and the Centre for Human Rights focussed on the compilation of a compendium of model legislation representing some of the "most innovative or successful examples of domestic legislation in the area of violence against women".[97]

Beyond the immediate concerns and priorities relating to the Conference in Beijing, two other points can be made.

First, participants agreed that the Special Rapporteur could and should endorse the international community's call on governments to develop national plans of action in the area of women's human rights and violence against women.

Second, general support was given to the need to ensure that UN agencies not directly implicated in human rights work nonetheless make a strong effort to build into their approaches the ways and means to address violence against women. In this regard, particular emphasis was given to the UN Development Program since bringing the question of violence against women firmly into the ambit of development is seen as essential. What must be emphasized here is that in pre-Conference consultations with NGOs, and local and regional women's groups, the UNDP must be encouraged to accept the principle that the agency has a positive obligation to address violence against women, its causes and consequences.

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[96]Valerie Raymond, unpublished notes prepared for NGO Expert Meeting, (Montreal, 1994).

[97]Ibid.

What is obvious from the body of this report and this conclusion is that the challenges facing the Special Rapporteur on Violence against Women, Its Causes and Consequences are formidable. That women in every region of the world do not enjoy an effective right to freedom of opinion and expression must be acknowledged as one of the key factors making the task even more difficult.

The commentaries and discussions at the meeting underscored the fact that women are silenced not only in the poorest of societies but also in those with the relative comforts and privileges of developed nations. And it bears repeating that this being the case, daily incidents and practices directed against women continue, practices that are degrading, violent, predictable, preventable and, worse, tolerated. From this fact, it can be strongly argued that if women do not enjoy the right to freedom of expression then the effective enjoyment of most other rights, including the rights to life and security of person, remain beyond their grasp.

If the issue of violence against women, its causes and consequences is to be substantively addressed by the Special Rapporteur what must first be ensured is the right of women, both through local associations and organizations and as individuals, to communicate directly with the Special Rapporteur and to do so without fear of reprisal by either state or non-state actors.

APPENDIX I

RECOMMENDATIONS

NGO EXPERT MEETING
ON THE
MANDATE OF THE SPECIAL RAPPORTEUR
ON
VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES

Normative Framework

1. That the International Bill of Human Rights be used as the normative framework for the mandate, supported by all other international human rights instruments including the Women's Convention, the Declaration and appropriate instruments in international humanitarian law and which can be used as interpretive aids;

2. That, in determining the approach to be taken, gender be used as the pre-dominant factor, viz. that violence arising from gender be the identifying factor in assessing the violation committed;

3. That structural violence with regard to labour rights, the economic situation of women, traditional practices and tribal customs be considered under the "causes and consequences" components of the mandate; and

4. That acceptance by the international community of the general principle that States must exercise due diligence in the prevention of human rights violations and promotion of the effective enjoyment of all rights be understood to be inclusive and requiring no further elucidation of a State's responsibility either for its own actions, those committed by its agents or by private individuals or organizations.

Mandate

1. A general recommendation was put forward to the effect that a broad framework of priorities had already been provided through the three areas identified in the Declaration as requiring attention, namely, domestic violence, violence in the community and violations by the State. The task, therefore, was seen to revolve more around the question of the order in which these areas would be taken and which particular aspects of violence evident in each of them would be addressed. It was recommended therefore further recommended that emphasis be placed on the areas in the order in which they are given in the Declaration, viz. domestic violence, violence in the community and violations by the State.

2. (a) In terms of determining the priority to be given to more specific aspects of violence under these three "main headings" two possible approaches were identified. The first would allow the nature and content of the information received to determine the priorities. The second would depend on the Special Rapporteur to determine the priorities, in consultation with diverse and representative groups.

(b) The urgency attached to the question of violence against women and the determination of women to ensure that the profile of the issue is raised even further on the international agenda resulted in the recommendation that the Special Rapporteur not wait to see what patterns emerge in the information received before deciding the particular priority areas requiring action.

(c) It was recommended, therefore, that the selection of themes, based on those that most uniquely show what human rights mean when gender is a primary defining factor be used and priority placed on areas such as sexual assault and torture, and forced pregnancy.

(d) The inclusion of the relationship between the realization and/or non-realization of socio-economic rights by women and associated incidents of violence was seen as possible through an approach and method of work in which the status or non-status of these rights was seen to be a contributing factor to forms of violence against women. In other words, that consideration of this element could well be taken up under the "causes" and/or "consequences" aspect(s) of the rapporteur's mandate.

(e) This approach to the socio-economic factors resulting from or leading to violence was also seen to be consistent with the principle of the indivisibility of rights, viz. that the degree to which there is the effective enjoyment of one or more rights has a direct bearing on the effective enjoyment of other rights. A cautionary note was sounded, however, to the effect that no direct correlation between violations of economic, social and cultural rights and violence against women should be drawn in order not to dilute the strength of the mandate in terms of the emphasis given to domestic violence, violence in the community and acts of violence perpetrated or condoned by the State.

3. It was recommended that a thematic framework be adopted rather than employing one involving the compilation of information on a country-by-country basis. An example of such a theme orientation would be to give priority to investigation and reporting on the situation of women in areas of armed conflict, the degree to which women enjoy an effective right to freedom of expression, or the use of rape and sexual assault as a form of torture and the means of intimidation by both public and private actors.

4. It was further recommended that within this thematic approach, the right to freedom of opinion and expression for women be emphasized.

5. However worthy various subjects for study may be it was recommended that the Special Rapporteur not assume responsibility for the generation of such theoretical or academic studies (that being one of the primary tasks of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities) but rather take an approach of active investigation, communication with governments, and reporting to the Commission on Human Rights and the Commission on the Status of Women.

6. It was recommended that the Special Rapporteur give careful consideration to the situations in some countries in which the law actively works against women. The example of the provision in law and the courts' handling of cases of prostitution was cited, where women are sentenced to as many as three years' imprisonment while the men, the prostitutes' clients, are considered in law to be and treated by the courts as witnesses.

7. Acknowledging the increase in tension between religious law and practice and secular forms of governance in many regions, it was strongly recommended that the Special Rapporteur give particular attention to violence against women arising from religious fundamentalism. The point was made that

this attention should not be confined to tensions arising from differing views in the Islamic world but should also include consideration of the situation of women in societies and communities where the tenets of other religions dominate, including those religions common to the Western world.

Documentation

1. That the Special Rapporteur communicate with governments and stress the need to receive gender-disaggregated information from them;

2. That guidelines for governments, inter-governmental agencies and NGOs be prepared in terms of what kind of information is needed and in what form it should be presented.

3. That the base of skilled NGO human rights documenters and monitors be expanded through provision of training and practice; and,

4. That NGOs monitor compliance at the state level and convey to the Special Rapporteur their findings as to the degree to which States are meeting their obligations under the relevant international human rights instruments.

Missions

1. In light of the sensitivity attached to the question of missions and with particular reference to missions the Special Rapporteur may choose to make on the basis of a theme such as a domestic violence (the first type of mission) it was recommended that in deciding what missions to undertake the selection be made among states representing various legal cultures and, further, that the States so designated be informed that their selection was random and did not reflect any judgment of the Special Rapporteur on the magnitude of the problem of gender-violence in the private sphere in the state concerned.

2. With regard to joint missions with other rapporteurs, the objective of which would be to emphasize the women's human rights perspective of the integrity rights involved, it was recommended that priority consideration be given to a cooperative effort with the Special Rapporteur on Torture, the Working Group on Disappearances, the Working Group on Arbitrary Detention and the Special Rapporteur on Freedom of Opinion and Expression.

3. Given that the success of missions will depend in part on prior notification for NGOs in the field of women's human rights it was recommended that all necessary steps be taken to ensure that such notification is provided.

4. Similarly, inasmuch as at least part of any mission will be to meet with individuals and organizations it was recommended that a guarantee be secured from the government concerned that both NGOs and individuals will have free access to the Special Rapporteur during the time in-country.

5. Deriving from this question of access it was recommended that a guarantee by the government must be given to the Special Rapporteur, individuals, and NGOs that no retributive actions will be taken against anyone meeting with the Rapporteur.

6. It is generally recognized that people in the receiving country for an official UN mission often develop and hold unrealistically high expectations that the mission will result in a quasi-immediate improvement in circumstances and situations (e.g. rape victims in the territories of the former-

Yugoslavia). It was therefore recommended that every effort be made to ensure that an overly optimistic view of possible results and potential remedies not be inadvertently expressed by the rapporteur during the course of the mission.

7. It was also recommended that a hierarchy of trauma not be created either in the planning stage or actual conduct of missions. In other words, the Rapporteur should not assume what violation is most important or which facet of the violation is most important. For example, rape may be the primary focus of the Special Rapporteur's mission but that focus cannot ignore the additional trauma that women have experienced: death of loved ones, loss of home and community, dislocation, untreated illness and war-related injury. Similarly, it is necessary for the Special Rapporteur to bear in mind that at the time of the mission individuals in the country visited may be consumed and preoccupied by different issues and/or violations such as lack of access to the justice system and services for trauma recovery, unsafe and inhuman working conditions, health services and education.

Appendix II

Needs of the Special Rapporteur

The Special Rapporteur has requested from governments information to assist her in the implementation of the mandate. Specifically, the request is for governments to forward to the Rapporteur examples of national legislation, commentaries from court cases, and statistical information on the following issues. Governments have also been asked to supply information on a) training programs for judges and lawyers with regard to violence against women; b) police practice and training procedures, and; c) special policies and institutions that respond to women victims of violence.

The following areas were given as priorities:

1. Violence in the family: information relating to domestic violence, genital mutilation, infanticide and incest;

2. Violence in the community: information relating to rape, sexual assault, sexual harassment, commercialised violence such as trafficking in women, prostitution, labour exploitation, pornography, women migrant workers, harmful traditional practices;

3. Violence by the state: information relating to women in detention, custodial violence, situations of armed conflict, refugee women, etc.

Information for the Special Rapporteur can be forwarded to her at the UN Centre for Human Rights, Palais des Nations, CH-1211, Geneva 10, Switzerland. Fax: 41-22-917-0212.

Appendix III

List of Participants

Gisèle Côté-Harper (Chair)	Chairperson, International Centre
Ariane Brunet (Organizer)	Women's Rights Coordinator, International Centre
Jan Bauer (Rapporteur)	ARTICLE 19
Charlotte Bunch	Centre for Women's Global Leadership
Carlota Bustelo	(CEDAW)
Florence Butegwa	Women in Law and Development in Africa (WiLDAF)
Roberta Clarke	Trinity Chambers
Frances D'Souza	ARTICLE 19
Tahany El Gebaly	Arab Lawyers Union
Cees Flinterman	Faculty of Law, University of Limburg
Sara Hossain	Ain O Salish Kendra (ASK)
Rukia Hussen-Aden	UN Centre for Human Rights (Women's Focal Point)
Philomena Kintu	Secretariat, CEDAW
Lucie Lamarche	Département des sciences juridiques Université du Québec à Montréal
Niamh Reilly	Centre for Women's Global Leadership
Margaret Schuler	The Institute for Women, Law and Development
Shana Swiss	Physicians for Human Rights
Giulia Tamayo	Flora Tristan/Entre Mujeres
Dorothy Thomas	Women's Rights Projects, Human Rights Watch
Karen van Ebbenhorst Tengbergen	Council of Europe
Observers	
Roxana Carrillo	UN Women's Human Rights Programme (UNIFEM)
Maarit Kohonen	UN Centre for Human Rights
Eva Lazaar	International Centre
Lucie Lemonde	La Ligue des droits et libertés (Québec)
Valerie Raymond	Human Rights, Women's Equality and Social Affairs Division (Canadian Department of Foreign Affairs)
Laurie Wiseberg	Human Rights Internet

APPENDIX IV

RESOURCE MATERIALS

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Tahany El-Gebaly, *Commentary on the Issue of Violence against Women -- Causes and Consequences in the Arab World and the Middle East*

Cees Flinterman, *The General Normative Framework of the UN Special Rapporteur on Violence against Women* and *Missions: Determining Factors*

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Philomena Kintu, notes for intervention for NGO Expert Meeting

Lucie Lamarche, *Economic, Social and Cultural Causes and Consequences of Violence against Women in Terms of Labour Issues*

Margaret Schuler, *Relationship of Women's NGOs and the Special Rapporteur*

Giulia Tamayo, *Overview from Latin America*

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Human Rights, Democracy and Good Governance: Stretching the World Bank's Policy Frontiers, by David Gillies.
Defending Human Rights Defenders: The Importance of Freedom of Association for Human Rights NGOs by Laurie Wiseberg.
Human Rights, Democracy and Development by David Gillies and Clarence Dias available in English, French and Spanish.